

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, : Docket No. CA 12-128  
: :  
Plaintiff : :  
v. : :  
ERIC H. HOLDER, JR., in his : Washington, D.C.  
Official Capacity as : Wednesday, July 11, 2012  
Attorney General of the : P.M. SESSION  
United States, : :  
: :  
Defendant, and : :  
: :  
ERIC KENNIE, et al., : :  
: :  
Intervenor-Defendants : 2:00 p.m.  
: :  
\* \* \* \* \*

TRANSCRIPT OF BENCH TRIAL  
DAY 3 - P.M. SESSION  
BEFORE THE HONORABLE DAVID S. TATEL  
UNITED STATES CIRCUIT JUDGE  
THE HONORABLE ROSEMARY M. COLLYER  
THE HONORABLE ROBERT L. WILKINS  
UNITED STATES DISTRICT JUDGES

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## C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
REV. PETER JOHNSON				
By Ms. Abudu	5	--	--	--
By Mr. Frederick	--	8	--	--
SENATOR RODNEY ELLIS				
By Mr. Dunn	9	--	50	--
By Ms. Maranzano	34	--	52	--
By Mr. Mortara	--	35	--	--
RANDALL BUCK WOOD				
By Mr. Dunn	53	--	--	--
HENRY FLORES				
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By Mr. Frederick	--	78	--	--
DR. DAVID MARKER				
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VIDEOTAPED TESTIMONY OF SENATOR CARLOS URESTI - 132

## E X H I B I T S

<u>NUMBER</u>	<u>ADMITTED</u>

(NO EXHIBITS MOVED INTO EVIDENCE.)

P R O C E E D I N G S

2 JUDGE WILKINS: Have a seat, sir.

3 MS. ABUDU: Would the Court like for me to do my  
4 introduction again? Do I need to state my name for the record  
5 again?

6 JUDGE WILKINS: No. It's Ms. Abudu, right? You can  
7 resume.

8 MS. ABUDU: Thank you.

9 (REV. PETER JOHNSON, DEFENDANT witness, having been previously  
10 duly sworn, testified as follows:)

## **DIRECT EXAMINATION**

12 BY MS. ABUDU:

13 Q. Reverend Johnson, do you oppose Senate Bill 14?

### 14      A.    Absolutely.

15 Q. Could you tell the court why?

16 A. Well, first, it is a threat to democracy itself, not just  
17 this particular Senate bill, but the threat on voting rights  
18 itself. The national threat is a threat to our democracy.

19                   And Texas in particular, where I am -- and I know there  
20        are a lot of advantages in this particular bill that say that if  
21        you're senior citizens you can vote absentee or you can do a  
22        mail-in ballot. I have a number of African-American senior  
23        citizen women -- my mother-in-law is 91 years old. Black people  
24        who are 75 years and older have a deep appreciation for the  
25        right to vote because they remember when they couldn't vote.

1       Consequently, I have a group of African-American senior citizen  
2       women, they want to go to the voting polls and stand in line and  
3       vote at the voting polls. There's a certain degree of dignity  
4       for them to do this. For me personally, it is an imposition on  
5       my time, because they won't go unless I take them. So I can't  
6       say, I'm going to send a van to pick you-all up. No, Reverend,  
7       I'm going to wait for you. You got to come and take us to vote.

8              Because these people appreciate this sacred right to  
9       vote, and they're not going to vote absentee. For  
10      President Obama's election, I begged them to vote early, because  
11      I knew it was going to be long, long, lines. And, of course, I  
12      couldn't convince them to vote early. On election day I had to  
13      get seats for them to sit in because the lines were so long at  
14      some of those voting precincts.

15             These are people who it would be a sin to take the  
16       right to vote from these old women. And no, they don't drive,  
17       they don't have no picture ID, they don't go international  
18       nowheres, so they don't have a passport. Their little checks go  
19       to the bank; the bank pays their bills. But they vote. And you  
20       don't have to beg them to vote. On election day, they going to  
21       start calling me early in the morning: "Honey, what time you  
22       going to come get us?"

23             Your first question, yeah, I deeply oppose it. It is a  
24       solution in search of a problem.

25       Q. Beyond seniors, are there any other groups of voters that

1 you believe based on your decades of experience doing voting  
2 rights work who will be affected by Senate Bill 14?

3 A. Yeah, beyond seniors, for instance, African-American  
4 young -- young African-American men. Let's say you're 25 years  
5 old, you vote; you get a ticket in Dallas, it cost you \$85.  
6 You're either unemployed or underemployed, and instead of paying  
7 the \$85, I think I'm going to sit this ticket out. I'll spend  
8 five days or four days in jail and sit it out. You come out of  
9 jail, you owe the State of Texas three or four thousand dollars,  
10 some kind of scheme that the Texas legislature came up with that  
11 I don't really understand how to explain it. But this scheme  
12 has disenfranchised a large, large, large, portion of low income  
13 men who have traffic tickets that they can't afford to pay the  
14 State of Texas off. There's an \$80 ticket that turned into the  
15 State of Texas for three or four thousand dollars.

16 I talk to young men like this almost on a weekly basis  
17 that come to my office because they can't get their driver's  
18 license now, you see.

19 Q. And in addition to African-American men, that group that you  
20 just talked about, are there other groups of voters who would be  
21 affected by Senate Bill 14?

22 A. Well, I think students will be -- whether they are black,  
23 white, or Hispanic, Texas students are going to be deeply  
24 affected by this. And if you look at the way students came out  
25 and voted four years ago when the quarterback for the University

1 of Texas endorsed President Obama, students in Texas voted in  
2 great, great, numbers for President Obama. This is directed at  
3 denying students the right to participate.

4 MS. ABUDU: I have no further questions for  
5 Reverend Johnson at this time. Thank you, sir. I pass the  
6 witness.

7 JUDGE WILKINS: All right. Any examination,  
8 cross-examination?

9 MR. FREDERICK: Matthew Frederick for the State of  
10 Texas.

11 **CROSS-EXAMINATION**

12 BY MR. FREDERICK:

13 Q. Good afternoon, Reverend Johnson.

14 A. Happy afternoon to you, sir.

15 Q. On behalf of the State of Texas, while we do not agree with  
16 all of your testimony, particularly about the state government,  
17 we do want to thank you for your service in the civil rights  
18 movement and your continued service to the State of Texas.

19 That's all I have. Thank you.

20 JUDGE WILKINS: All right. You can step down. I  
21 assume there's no redirect?

22 MS. ABUDU: No, sir. Thank you.

23 JUDGE WILKINS: All right. You can step down, sir.

24 THE WITNESS: Thank you.

25 MR. ROSENBURG: With Your Honor's permission, we would

1 like to call our next witness.

2 JUDGE WILKINS: Yes.

3 MR. ROSENBURG: Senator Rodney Ellis, who will be  
4 presented by Chad Dunn.

5 MR. DUNN: This is Chad Dunn from Brazil & Dunn in  
6 Houston. Since it's come up so much, I was born and raised in  
7 Spring, Texas, although we called it Sprang. I also need to  
8 note that Senator Ellis is also a witness on behalf of the  
9 United States Department of Justice.

10 JUDGE WILKINS: Certainly.

11 MR. DUNN: I should have mentioned, I represent the  
12 Kennie Intervenors.

13 (Oath administered by Courtroom Clerk.)

14 **(SENATOR RODNEY ELLIS, DEFENDANT witness, having been duly  
15 sworn, testified as follows:)**

16 **DIRECT EXAMINATION**

17 BY MR. DUNN:

18 Q. Senator, please state your name.

19 A. My name is Rodney Ellis.

20 Q. Could you spell that for our record, sir?

21 A. R-O-D-N-E-Y, E-L-L-I-S.

22 Q. Would you introduce yourself to the Court, please?

23 A. I'm a member of the Texas State Senate, and I've been a  
24 member of the Senate for 22 years.

25 Q. Where from?

1 A. Houston.

2 Q. Can you describe your district to us?

3 A. It's a city district. I take in some of the wealthiest  
4 neighborhoods, most of the poorest neighborhoods, a very diverse  
5 district that Barbara Jordan once represented in the state  
6 Senate.

7 Q. How would you describe it racially?

8 A. It's about 40 percent African-American, about 30 percent  
9 Hispanic, you know, probably about 10 percent other, somewhere  
10 in that neighborhood, and about 10 percent Anglo. Ten percent  
11 other would be Asian-American, South Asian-American.

12 Q. Over the time that you've represented the district, has it  
13 always been a predominantly minority district?

14 A. Yes.

15 Q. What is the community that anchors the voting in the  
16 district, mostly?

17 A. The African-American community.

18 Q. Now, you mentioned that you represent some of the wealthier  
19 parts of the city. You said that they're in your district. Is  
20 that where most of your votes come from?

21 A. No.

22 Q. Have you gotten to know the voters in your district over the  
23 last 20-some-odd years?

24 A. I think so. I've lasted 22 years. I think we know one  
25 another.

1 Q. How would you describe the voters in terms of their income  
2 level?

3 A. It's a poor district; I mean, a high percentage of people  
4 who get free lunches at the public schools. It's a fairly poor  
5 district, but I do represent the medical center and downtown,  
6 some very wealthy buildings. But basically a poor district.

7 Q. For our records, is it fair to describe you as an  
8 African-American?

9 A. Last time I checked.

10 Q. All right. Some things that we see don't come down in our  
11 record.

12 You were here for Reverend Johnson's testimony. Is  
13 that a fact?

14 A. I was.

15 Q. You haven't been here for the other parts of the trial,  
16 though?

17 A. That's correct.

18 Q. You heard Reverend Johnson testify about some incidents of,  
19 we'll call them, racial discord in Texas. Did you hear that?

20 A. I did.

21 Q. Do you agree with Reverend Johnson's assessment that racial  
22 tension in Texas is improving?

23 A. I do. We've made tremendous progress in Texas, and we have  
24 tremendous amount of work yet to do.

25 Q. Do you believe that the racial tension exists at all anymore

1       in Texas?

2       A. Yes, it does exist.

3       Q. Is that something you've experienced as an African-American

4       in the state?

5       A. In subtle ways. I mean, I've been fairly blessed, but in  
6       subtle ways. As a kid once, many years ago, I was arrested in  
7       an incident, and I think race had a bit to do with it. But that  
8       was some time ago.

9       Q. What are some of your legislative accomplishments that  
10      you're most proud of?

11      A. First the state's budget. I had the privilege of being the  
12      finance chair and passed the budget unanimously in '01. I  
13      passed the James Byrd Hate Crimes Act long before the federal  
14      government could do it, and I'm very proud of it. It took me a  
15      decade to pass it, the James Byrd, B-Y-R-D, Hate Crimes Act in  
16      Texas in 2001, after working to pass it for a decade under our  
17      two-thirds tradition. But I did pass it after a decade.

18      Q. About how many bills have you passed, Senator?

19      A. Over 500.

20      Q. Turning back to Mr. Byrd, could you describe that gentleman  
21      to the court, who he was?

22      A. He was an African-American in Jasper, Texas,  
23      well-publicized; one of the most horrific hate crimes in modern  
24      American history, dragged to death in Jasper, Texas.

25      Q. Jasper is in East Texas. Is that true?

1 A. Yes.

2 Q. Have you followed up on the racial situation in East Texas?

3 A. I have. I haven't been to Jasper in about six years, but  
4 recently they had an African-American police chief who was fired  
5 in a fairly well-publicized incident, and some people lost  
6 office over it. So there are racial tensions there, and issues  
7 involving Mr. Byrd's grave being defaced over the years.

8 Q. And the discharge of the police chief, has that happened  
9 just in the last few months?

10 A. Got a lot of press, *New York Times*. It was at least within  
11 the last six months.

12 Q. Back to the Hate Crimes Bill, was that an easy piece of  
13 legislation to pass?

14 A. Tough.

15 Q. How long did it take you?

16 A. A decade.

17 Q. Is it fair to describe the debate on that bill as having  
18 some racial under tones?

19 A. It did. We had a couple of fairly high profile incidents of  
20 race crimes, but, you know, race was a part of it; obviously,  
21 issues of sexual orientation was there, and swastika issues.  
22 But issues of race and class were a big part of it.

23 Q. How were you ultimately able to overcome at least initial  
24 opposition to pass that bill?

25 A. I think that a lot of my colleagues who had reservations,

1       over time came around from working with them. It was sort of  
2       like the atomic bomb every session that would blow up at some  
3       point.

4                   A presidential race helped. That bill, the lack of  
5       that bill passing, got a lot of press when Governor Bush was  
6       running for president. So I think after he left, I think a lot  
7       of my colleagues didn't really like that spotlight being on our  
8       state was a factor, and I also chaired an influential committee  
9       and I was probably a lot nicer that session. That might have  
10      helped.

11       Q. Those senators that initially had opposition, did you have  
12      to ultimately answer all their questions about the bill before  
13      you could get it through?

14       A. Yeah, I did, we say "water down." It was a good bill, but I  
15      did over time have to make concessions. But it was still a good  
16      bill, a strong bill, but I did have to tone it down a bit to get  
17      some support.

18       Q. I want to turn now to Senate Bill 14, which is the photo ID  
19      bill that's at issue in this case. You're familiar with that,  
20      aren't you, sir?

21       A. Yes.

22       Q. And as we talk about the procedure on that bill, to the  
23      extent you can make some reflections to the James Byrd Bill, I'd  
24      appreciate it. But the first thing I want to talk about -- and  
25      there's already been testimony on this, and the Court has asked

1 us to only cover, as best we can, new issues. So I'm going to  
2 kind of direct you to some new topics as we move on. Let me  
3 know if you get lost.

4 There's been some testimony about the bill being  
5 declared an emergency. Is that your recollection?

6 A. It was.

7 Q. What does that mean?

8 A. That means that the governor declares a bill an emergency so  
9 it won't need a four-fifths vote, four-fifths of the membership  
10 in order to get it passed in the first 30 days of a legislative  
11 session.

12 Q. In your experience, what kind of bills are typically made  
13 emergencies?

14 A. Well, generally ones that are an emergency. You know,  
15 something that has great public policy impact. But it is a  
16 governor's prerogative.

17 Q. In terms of Senate Bill 14, was there any impending election  
18 that made that bill an emergency factor?

19 A. No.

20 Q. Do you have an opinion as to why it was made an emergency?

21 A. Well, they knew that some members, particularly the members  
22 who represent minority districts in the legislature, would use  
23 every procedural hurdle possible to try to keep the bill from  
24 passing.

25 Q. Had many of those procedural hurdles been used against you

1       in the James Byrd Bill?

2       A. Oh, yes.

3       Q. Any governor ever make your bill an emergency?

4       A. No, sir.

5       Q. There's also been some testimony about a 21-vote Rule or  
6       tradition. Do you know what I'm speaking of?

7       A. I do.

8       Q. Can you just describe that as you understand it?

9       A. It takes two-thirds of the membership to bring up a bill -  
10      not a resolution, but a bill on the Floor of the Senate -  
11      probably patterned after the cloture tradition here in  
12      Washington to cut off a filibuster in the U.S. Senate. It  
13      forces you to find a consensus, forces you to wait until an  
14      issue is ripe, forces you to get your bill killed.

15      Q. Is that what happened to you time and again on the  
16      James Byrd Bill?

17      A. Yeah, for a decade. And most of the bills I carry a  
18      fairly -- they're the ones that I have to work a bit to make  
19      sure they're ripe.

20      Q. Do many of your bills impact directly the minority community  
21      in the state?

22      A. They do. Over 22 years, I'm proud of my entire record, but  
23      I have carried a lot of criminal justice reforms. I would say  
24      I've got a pretty good civil rights record in the legislature.

25      Q. There's been some testimony here that bills pass in the

1 Senate all the time on just a majority vote. Would you agree  
2 with that?

3 A. No.

4 Q. What types of bills are passed on a majority vote, if any?

5 A. Bills that don't matter to anybody, or either bills where  
6 nobody is paying attention, or when the tradition is changed,  
7 there's usually an eruption.

8 Q. Had the tradition been changed on redistricting bills?

9 A. Yes. In 2003, we did re-redistricting in the middle of the  
10 decade, and they did pass that bill with a majority vote. They  
11 broke the two-thirds tradition, which triggered a group of us -  
12 including this old man - breaking the quorum. I was in  
13 New Mexico in exile for 48 days.

14 Q. When you would deal with the 21-vote tradition in working  
15 with other senators, did you ever come across an opportunity to  
16 skip past it yourself?

17 A. I did.

18 Q. When was that?

19 A. In, I think, 1993. In 1991 and 1993 I was trying to  
20 integrate the judiciary, and there was a lawsuit to force us --  
21 I was trying to force the state to elect judges from -- district  
22 judges from something less than a county-wide vote. We elect  
23 judges in Texas.

24 Q. What would the effect of that been?

25 A. It would have given us a larger number of African-Americans

1 and Hispanics on judicial branches in Texas, as what happened in  
2 Mississippi and Louisiana.

3 Q. What happened when you tried to, shall we say, skirt the  
4 21-vote rule?

5 A. Well, I didn't try to skirt it. It came up at a deposition.  
6 The Attorney General wanted the House and the Senate and the  
7 Lieutenant Governor and Speaker to sign off on the settlement,  
8 which is unprecedented, but that's what he wanted. So he wanted  
9 a vote in the Senate. And there was a resolution coming up -  
10 why they had it there, I don't know - involving judicial  
11 redistricting. I think it was a bill to say we resolved it, we  
12 ought to go back and reapportion judicial districts. And it was  
13 the next one coming up on the agenda.

14 Q. What does that mean, when it's the next bill coming up?

15 A. That means it's not out of order. And a resolution takes a  
16 majority vote. It was not a bill, it was a resolution. So I  
17 was going to pass it by majority voters. It was coming up. I  
18 was going to substitute something different from what it  
19 initially said, but my substitution was germane.

20 The presiding officer of the Senate, the lieutenant  
21 governor, was a Democrat, called me in and said, "You think  
22 you're slick, you found a way to get your resolution up, but  
23 you're going to bust this place up by the seams, and if I were  
24 you, I would pray on that a little bit."

25 So I backed down. I went and met with some of my

1       colleagues who didn't agree with me, Republicans, and some  
2       Democrats who weren't crazy about it. And the compromise we  
3       reached was instead of passing that resolution through the  
4       Senate, which under the rules the resolution could be passed by  
5       majority vote, I could have asked the Senate to meet in  
6       Committee of the Whole and I could pass the resolution through  
7       the committee, not through the Senate. Same 31 votes, but  
8       pretty important.

9                  Then I went to the Attorney General and said, "Hey, I  
10       can't pass it through the Senate. I'm going to rip tradition.  
11       It will come back to haunt me in the Senate. Will you take a  
12       simple vote that you don't need in Committee of the Whole on  
13       this resolution?" He said, "Yes." I did it, and we passed it.  
14       Then the judges went to court and blocked me in federal court.  
15       So, so much for that.

16       Q. Just to be clear, the measure didn't pass the Senate as a  
17       whole, it only passed the Committee of the Whole?

18       A. That is correct.

19       Q. So it didn't have the effect, to the extent resolutions do,  
20       of becoming law. Is that true?

21       A. True. And resolutions, I could pass one resolved that we  
22       honor the great lawyers in this room today. It's worth the  
23       paper it's written on.

24       Q. Right. Now, there's also been some testimony here about the  
25       intent calendar in the Senate, and in particular, that the

1 intent calendar gives ample notice to senators as to what may be  
2 debated. Do you agree with that?

3 A. No.

4 Q. Why not?

5 A. The intent calendar is simply a list of all of the bills  
6 that are eligible to come up on the floor. The tradition is,  
7 you have your two-thirds, you have your 21 votes or you would  
8 not be recognized, and you are recognized at the pleasure of the  
9 presiding officer.

10 So even if you have 31 votes - I've been there - and if  
11 the presiding officer of the Senate chooses not to recognize you  
12 to bring it up, you don't get to bring it up. It is a strong  
13 president of the Senate tradition form of government in Texas,  
14 lieutenant governor controls the floor of legislation.

15 Q. There's also been some testimony that it's common for  
16 senators to bring up important pieces of legislation when  
17 another senator is absent. Is that true, in your view?

18 A. No, that's not true, unless the senator cut a little deal.  
19 I know it's hard for you-all to believe we do that, if I say,  
20 "Could you vote on this while I'm out?" But you don't do that.  
21 We leave our votes sometimes. It's a small body, 31 members, so  
22 you have to have some element of trust among one another. So if  
23 one has to eat, go to the doctor, go to facilities, you don't  
24 try to slip something past somebody. If so, I would have passed  
25 a lot more than 500 bills.

1 Q. Would it have been out of the ordinary for a major piece of  
2 legislation like Senate Bill 14 to pass and be brought up while  
3 another senator is out of the room?

4 A. Very much out of the ordinary.

5 Q. Now, I want to turn to the debate on Senate Bill 14 itself.  
6 Did you offer some amendments in that debate?

7 A. I did.

8 Q. Do you remember what they were?

9 A. Well, one was to permit students to use their ID from a  
10 public university; one was a same-day voter registration; a  
11 third one was to measure whether or not this legislation, this  
12 bill, would have a disparate impact on racial and ethnic  
13 minorities, the elderly, a whole list of things prospectively,  
14 so after it passed.

15 Q. So I'm going to turn first to the public school university  
16 ID amendment.

17 MR. DUNN: For the record, I'll indicate that's at  
18 Joint Appendix 2740 and it was Floor Amendment 19.

19 BY MR. DUNN:

20 Q. Can you describe generally what that amendment would have  
21 done?

22 A. It would have said you could use your student ID from any  
23 public university in Texas. I think my reference was to  
24 four-year universities, not community colleges. I just can't  
25 remember. I think four-year universities.

1 Q. Why did you think that would be helpful?

2 A. A lot of young people are just not -- you know, they may not  
3 have a driver's license, they may have lost their driver's  
4 license, you have to motivate them to go get ID. Plus, somebody  
5 had an amendment -- I think I thought of that one sort of on the  
6 fly. Someone had an amendment for handguns, and normally I'm  
7 someone who is not necessarily in line with the gun-toting  
8 crowd.

9 Q. Did you vote for the amendment allowing for a handgun  
10 license to work?

11 A. I did, in part hoping I would get a little sympathy and get  
12 some votes for mine.

13 Q. Did you make some comments on the Floor on the handgun  
14 license?

15 A. I did. I did.

16 Q. What sort of things did you say that you thought might get  
17 you some sympathy later on?

18 A. "I'm going to vote for this. You-all know that I'm not a  
19 big fan of handguns. Unlike some of you who tote guns on the  
20 Floor in the middle of a debate, I'm not licensed to carry. I'm  
21 going to vote for this and hope you will be as equally  
22 sensitive," or something like that, "with an amendment I'm going  
23 to ask you to consider shortly."

24 Q. And that was the next amendment?

25 A. Pretty close. I don't remember when.

1 Q. Now, what was the opposition, if there was any, to the  
2 university ID amendment of yours?

3 A. One question that came up was, do I know how many  
4 universities we have in Texas. And I didn't know, still not  
5 sure. It might be 40 or 50. But it was along the lines of  
6 whether each university could have a different policy. Do we  
7 know if they all have the same policy. And if you are a student  
8 in college in Texas, do you have to be a citizen. Then there  
9 may be something in the record of me saying I don't think  
10 anybody who is in the country illegally would try to vote.

11 Q. Are you aware of how many IDs -- forms and types of IDs  
12 there are of military IDs?

13 A. A lot of them. I know we think of the Army, the Navy, the  
14 Air Force, but you've got various folks have their state  
15 National Guards, you've got a lot of them. I don't know how  
16 many, but there are a lot of them.

17 Q. What was the fate of your university ID amendment?

18 A. All of the members who represent minority districts voted  
19 for it; others voted against it.

20 Q. Was it tabled?

21 A. Yes.

22 Q. The second amendment you mentioned was same-day  
23 registration. Can you describe what that would have done?

24 A. That would have provided what happens in Iowa, several other  
25 states - I can't remember off the top of my head - where you can

1 go and register to vote with whatever system the state puts in  
2 place on the day of voting. So in our state we have a couple of  
3 weeks of early voting. You have to go in, whatever procedures  
4 one wanted to put in place, if you wanted to require that they  
5 have a photo ID or sign an affidavit, but you could register  
6 people on the day that they go to vote, which several states in  
7 America do.

8 MR. DUNN: And for the record, that's in Joint Appendix  
9 2745 to 2746.

10 BY MR. DUNN:

11 Q. What was the opposition, if there was any, to that  
12 amendment?

13 A. Very limited discussion. Something along the lines of: I  
14 know you've had that bill before, so you have ample time to get  
15 your votes and bring that up, I'm sure it would be two-thirds,  
16 and bring it up as a separate bill. But it was very limited  
17 discussions. It was pretty much dismissed out of hand.

18 Q. Is that true of all three of these amendments?

19 A. All three of mine, and probably all 30 or 40 that were  
20 offered.

21 Q. What was the fate of the same-day registration amendment?

22 A. It failed. I think maybe 20, 21 -- 31 of us, I may have had  
23 10 votes for it.

24 Q. And what were the characteristics of the senators who  
25 supported it, the amendment?

1 A. I had most of the members who represent minority districts,  
2 with the exception of one, I think.

3 Q. And then the final amendment you mentioned was a report on  
4 the bill. Can you describe to the Court what that amendment  
5 would have done?

6 A. Well, it could have asked --

7 MR. DUNN: Excuse me, Senator.

8 JUDGE COLLYER: Excuse me. I apologize to everybody  
9 for interrupting. Thank you. Go ahead, sir.

10 MR. DUNN: Just for the court, Senator Rodney Ellis is  
11 on the stand.

12 BY MR. DUNN:

13 Q. We're talking about the third and final amendment. Can you  
14 describe to the Court what it was?

15 A. It asked for a breakdown by race, ethnicity, age, other  
16 factors of who would not have a government ID. It would give a  
17 breakdown after this bill was implemented, what the impact was  
18 in various communities. So it was essentially to get an answer  
19 to all of the questions that I and others were asking before the  
20 bill would go into effect. So at least I wanted to know after  
21 it went into effect.

22 Q. Would the amendment at all have delayed or changed the  
23 implementation or effect of the bill?

24 A. No, not at all.

25 Q. It was simply a report --

1 A. Yes.

2 Q. -- to be given.

3 What was the opposition, if any, to the amendment?

4 A. The comment was made, you're a member of the Senate, you can  
5 ask the Secretary of State just like anybody else can. My  
6 reaction was, I have asked. I didn't get it before the bill  
7 came up on the floor, so I would like to get it after the bill  
8 passed. Everybody knew the votes were there.

9 Q. Over the course of the debate, did other senators mention  
10 during the debate that they were seeking information from  
11 Secretary of State and not receiving it?

12 A. They did.

13 Q. In spite of that event, what was the outcome of your  
14 amendment?

15 A. It failed. All the members who represented minority  
16 districts voted for it and all the members who did not voted  
17 against it.

18 MR. DUNN: For the record, that's at Joint Appendix  
19 2747.

20 BY MR. DUNN:

21 Q. Now, how many bills have you passed, Senator, in your  
22 history?

23 A. A little over 500 that I've been the lead sponsor on.

24 Q. When you do that and you get down to the Senate Floor and  
25 you're trying to get your 21 votes, what are some of key

1 characteristics you need to have to get the 21 votes?

2 A. I need to know what the bill does. I need to know of any  
3 impacts it may have on various groups. I ought to be able to  
4 respond to questions like what inadvertent impact, what  
5 unintended consequences would it have. I have to know what it  
6 is, tell people how it would impact their districts. Sometimes  
7 you've got to give members a sense of how it would impact their  
8 politics if you know better than -- if it's your bill, you ought  
9 to know about it, or at least I ought to know about it. I'll  
10 need for them to vote for me again, so I need to know.

11 Q. When you asked Senator Fraser questions about  
12 Senate Bill 14, questions along the lines you just described,  
13 what kind of response would you receive?

14 A. Very minimal: "I'm not advised. Ask the Secretary of  
15 State."

16 Q. Is that the typical response you expect from a senator on a  
17 main line bill?

18 A. No, that would indicate to me that either the person didn't  
19 feel that good about what they were doing.

20 Q. Now, also there's evidence that the photo ID bill was in  
21 various sessions leading up to its final passage. And you were  
22 present for those debates. Is that true?

23 A. Yes.

24 Q. How would you describe the progression of the bill? Did it  
25 get more restrictive or less restrictive, better or worse?

1 A. It got more restrictive over the years. We meet every other  
2 year, so every session it was stronger.

3 Q. Is that a typical circumstance that bills as they spend time  
4 in the legislature get more restrictive?

5 A. No. Usually to get more support, unless something changes,  
6 unless people change their mind, usually you make some  
7 concessions to try and get your votes to accommodate concerns  
8 that are raised.

9 Q. What, if anything, allowed the Senate to make the ID bill  
10 more restrictive this session?

11 A. Majority vote. You know, if you have any votes, you can do  
12 whatever you want to do. And to be able to pass it by a simple  
13 majority as opposed to a two-thirds vote, I assume there's very  
14 little reason to make concessions.

15 Q. Now, just a few issues I'm going to jump around, and then  
16 I'm almost finished. But you're familiar with African-Americans  
17 in particular in your district that vote, and you heard  
18 Reverend Johnson's testimony earlier about older  
19 African-Americans?

20 A. Yes.

21 Q. What is your opinion on older African-American voters'  
22 propensity to vote in person or mail?

23 A. My daddy is 91. It's a rich tradition to go and vote on  
24 election day. My wife is younger, and she still goes to vote on  
25 election day. It's just -- it's -- old habits die hard. So

1 even with a two-week voting period, if I had a challenger in a  
2 primary, I would worry about what might happen on election day.  
3 All that early ballot, mail-in, not with my black voters, it  
4 just does not work. They want to vote on election day.

5 Q. Now, Reverend Johnson also talked about a gentleman who had  
6 parking tickets and would lose their license. Do you remember  
7 that testimony?

8 A. I do.

9 Q. Is that a problem that you have in your district?

10 A. Major problem; my district and statewide, at least over a  
11 million people because of surcharges we put on tickets. It's a  
12 civil penalty, it's not a felony. You still have a right to  
13 vote.

14 Q. Is there any effect in your mind for requiring this new  
15 state election certificate to be issued at the DPS office? Is  
16 there any significance of that to you?

17 A. Most people in their right mind, if you owe for a ticket,  
18 you probably wouldn't show up and pass somebody in a uniform and  
19 say, "I would like to come get my state issued ID so I can  
20 vote." That's just not high on your priority list if you're in  
21 your right mind.

22 Q. Are there members of the minority community who may not have  
23 a parking ticket issue, but still have some apprehension about  
24 being before a uniformed officer?

25 MR. MORTARA: Your Honor, I object on foundation

1 grounds.

2 JUDGE COLLYER: I think there's been sufficient  
3 foundation. Do you agree with me? I only heard a little bit of  
4 this.

5 JUDGE WILKINS: Yeah, overruled.

6 A. Yes, I'm a state senator. If a law enforcement official  
7 stops me rushing to the airport, I'm going to put on my very  
8 gentle attitude. Culturally, I think, I don't know about other  
9 groups, but clearly for blacks, yeah, that's still an  
10 apprehension of law enforcement, for whatever reason, because of  
11 historical issues.

12 BY MR. DUNN:

13 Q. I'm going to move to another issue now. There's been some  
14 testimony in this case about Representative Deborah Danburg.  
15 Are you familiar with her?

16 A. I am.

17 Q. Who is she, for the court?

18 A. She's a state representative, Anglo state representative  
19 that represented the 10 percent of my district that is  
20 Anglo-American.

21 Q. There was some testimony about her in 1997 carrying a bill -  
22 I believe it was House Bill 330 - dealing with identification  
23 and voting. Do you recall that bill?

24 A. I do.

25 Q. The testimony, I believe, here was that the bill passed the

1 House overwhelmingly, and that it would require the showing of  
2 photo ID, and that was ultimately changed in the Senate. Is  
3 that how you recall it?

4 A. The bill did pass overwhelmingly; I think unanimously in the  
5 Senate. I voted for it. I don't know if we had a journal in  
6 the Senate that year. What that bill did was make it easier to  
7 vote, so if you didn't have your voter registration card, but  
8 you went to vote and your name -- if you didn't have your card  
9 and your name is not in the directory as someone who is  
10 registered, you could show an ID and still be able to vote.

11 So what that bill did was make it easier to vote, which  
12 is why both parties -- I don't think a soul testified against  
13 it. So that bill was not restricting anybody's ability to vote,  
14 it was making it easier.

15 Q. Which governor signed that bill?

16 A. Governor Bush.

17 Q. The parameters in that bill, is that ultimately what we're  
18 operating under today and before Senate Bill 14 is put into  
19 effect?

20 A. It is.

21 Q. Now, Senator, is it your opinion that Senate Bill 14 will  
22 have a disparate impact on the minority community?

23 A. It is.

24 Q. Why do you think that?

25 A. I think most of the people in Texas who don't have

1 government issued ID are African-Americans or Hispanics, and  
2 that's validated by -- I've seen the Brennan Report, the  
3 Baker Carter or Carter Baker Commission Report. Based on my  
4 personal experience, people that -- in my district who complain  
5 about surcharges disproportionately, even in overwhelmingly  
6 minority district, they are my Black and Hispanic constituents.

7 Q. What effect, if any, did the State, not having provided you  
8 information that you asked for, have on your opinion?

9 A. Well, it indicated to me that the State knew that it would  
10 have a disproportionate impact on people of color, which is why  
11 they didn't want to go and supply the information. I just don't  
12 think it's that hard to go and pull the data and see who has  
13 surcharges. I mean, on our driver's licenses we put the race  
14 and ethnicity on that there. That's the common ID most people  
15 would have on the driver's licenses.

16 Q. What effect, if any, did it have that all of your amendments  
17 were rejected?

18 A. That indicated to me a tremendous insensitivity, and that my  
19 colleagues knew what they were doing, intended to do it, and  
20 operating under the rules of the majority vote, they were going  
21 to do it.

22 Q. In your opinion, was there serious consideration of your  
23 amendments and those of any of the other minority members of the  
24 legislature?

25 A. One. I think it was a minority member who offered the

1       licensed handgun holder. I'm not sure, but I think that was  
2       Senator Hinojosa who offered that.

3       Q. Senator, do you have opinion as to whether the Senate as a  
4       whole passed Senate Bill 14 with a discriminatory intent?

5       A. I do.

6       Q. Why do you have that opinion?

7       A. Based on my experience. I've been there 22 years. Hey, I  
8       know it. I love all my colleagues. One is in the audience  
9       today. They are my friends, but they knew what they were doing  
10      and they intended to do it. Speeches on the Floor made the  
11      comment to them that those are decent people that passed the  
12      poll tax, but they were on the wrong side of history. In this  
13      crowd, they're my friends, but they're on the wrong side of  
14      history. Good people did a very bad thing.

15      Q. How can one know whether this is political interests at play  
16      or -- let me strike that.

17                  Was there any argument made during the debate that one  
18       of the purposes for this bill was to keep Democrats from voting?

19      A. Now, this bill has everything to do with race and nothing to  
20      do with party. Particularly, as it relates to Hispanics.  
21      Governor Bush, as an example, did very well with Hispanic  
22      voters. Despite my efforts to minimize, he did very well. This  
23      bill would disenfranchise the very Hispanics who voted for  
24      Governor Bush.

25                  MR. DUNN: Thank you, Senator. No more questions.

1 MS. MARANZANO: Good afternoon. Jennifer Maranzano on  
2 behalf of the Attorney General.

3 **DIRECT EXAMINATION**

4 BY MS. MARANZANO:

5 Q. Senator, I just have a few questions. Are you familiar with  
6 the driver's license offices in your district?

7 A. I am.

8 Q. Are the driver's license offices in your district easily  
9 accessible by public transportation?

10 A. No, they're not. I have an inner city district, so we're  
11 inside the loop, the loop that's around the inner city of  
12 Houston. I must admit we senators get VIP treatment. We show  
13 up and somebody will give us our license. For my constituents,  
14 they don't have that privilege.

15 Q. What are the approximate wait times at the driver's license  
16 office's in your district?

17 A. I've heard complaints that the lines have been as long as  
18 two, three, four hours.

19 Q. What, if any, law enforcement presence exists in the  
20 driver's license offices?

21 A. Quite a bit. I mean, as I said, I haven't been in a while,  
22 but when I went to get my license, I didn't have any surcharges  
23 on me, but the last time I went, law enforcement is there.

24 Q. Would some of your constituents be intimidated to go to an  
25 office with a law enforcement presence?

1 A. Yes.

2 Q. Why is that?

3 A. As I stated earlier, just the tradition, I think, for  
4 African-Americans in general, there's a fear of law enforcement.  
5 But if you have a surcharge, if you owe a ticket, if you owe for  
6 something, you know, that's probably not the best place to go  
7 past someone in a Texas Rangers uniform to go get this so-called  
8 state issued ID in order to vote.

9 MS. MARANZANO: Thank you. I have nothing further.

10 JUDGE WILKINS: All right. Cross-examination?

11 MR. MORTARA: Yes, Your Honor. A moment, Your Honor,  
12 while I set up my computer.

13 **CROSS-EXAMINATION**

14 BY MR. MORTARA:

15 Q. Hello again, Senator Ellis.

16 A. How are you?

17 Q. I'm doing great. It's great to see you again. We spoke a  
18 little bit in January. Do you remember that?

19 A. I do.

20 Q. I think we spoke for about three minutes, maybe less;  
21 probably just six or seven today. I want to talk about some of  
22 the statements that were made in the Committee of the Whole.  
23 You talked a lot about the discussions in the Committee of the  
24 Whole and on the Senate Floor. Right?

25 A. That's correct.

1 Q. And I think you know the exchange I'm going to talk to you  
2 about. It happened on January 25th, 2011. And I'm showing you  
3 what was marked at your deposition as Ellis 3, and is now  
4 Plaintiff Exhibit 573, but it's definitely a case of  
5 over-designation because it begins on JA 000375, for the Court's  
6 reference.

7 And I want to take your attention to the bottom of the  
8 second page, where you ask Senator Fraser down around what has  
9 been transcribed at line 15 and then at line 19, you ask  
10 Senator Fraser, "Are you confident, Senator, that your bill  
11 would not have a disparate impact on the elderly, on women, on  
12 those that are physically challenged, on racial ethnic  
13 minorities?"

14 Senator Fraser answers, "I am."

15 You begin again, "Are you confident, Senator Fraser?"  
16 Probably talking over each other. He says, "Absolutely sure."  
17 He says, "I have not filed the bill -- I would not have filed  
18 the bill if I had thought about that. I want to make sure that  
19 every person in the state has a right to vote. The -- not --  
20 you know, the right that we extend to them, they should have  
21 that, and I do not believe that in any way we're impacting that,  
22 and that -- that -- you know, I want to make sure that the  
23 groups you're talking about, you know, women, minority, elderly,  
24 that they all have the right to vote; and I believe my bill does  
25 that."

1                   And you said, "Okay. And I know that's your intent."

2                   That's what you said in the Committee of the Whole. Correct?

3                   A. Correct.

4                   Q. When you gave your sworn testimony in this case to my  
5                   colleague Mr. Sweeten, you told him that what you said in the  
6                   Committee of the Whole to Senator Fraser was a lie. Right?

7                   A. That's correct.

8                   Q. So at least at one point, when you were talking in the  
9                   Committee of the Whole this one time, at least this one time,  
10                  you lied. Correct?

11                  A. As you know, the rest of the testimony said it was  
12                  comparable to saying the gentle lady from wherever. That's what  
13                  you call southern genteel, being polite.

14                  Q. Senator Ellis, this did not say, "Gentle lady," or "Gentle  
15                  woman," it says, "I know that's your intent." Correct?

16                  A. I suggest you ask Senator Fraser does he think I think that  
17                  was his intent or was I being nice.

18                  Q. Senator Ellis, can you focus on my question?

19                  A. I did.

20                  Q. What you said is, "And I know that's your intent." Correct?

21                  A. That's correct.

22                  Q. According to you, if a Latino or African-American voted for  
23                  Senate Bill 14 in either the House or the Senate, it's your  
24                  opinion they weren't representing their constituents who were  
25                  Black or Latino. Right?

1 A. That's correct.

2 Q. And, in fact, you've compared minority representatives that  
3 voted for Senate Bill 14 to blacks who supported the South in  
4 the Civil War, correct?

5 A. That's correct.

6 Q. But you're also aware that the vast majority, the majority  
7 of polling on this issue, shows that both Latinos and  
8 African-Americans, a majority of them support a photo ID  
9 requirement. Correct?

10 A. Depends on the question that was asked in the poll.

11 Q. You're aware that the majority of polls show that a majority  
12 of African-Americans and Latinos support a photo identification  
13 requirement. Correct?

14 A. I am aware that polls that have asked certain questions have  
15 indicated that African-Americans and Hispanics support them.

16 I'm also aware that --

17 Q. Senator Ellis, if the Justice Department or your friend  
18 Mr. Dunn wants to ask you for further clarification --

19 JUDGE COLLYER: This was an answer to the question. I  
20 think he's entitled to finish it.

21 A. I'm just making a point. I'm aware of polls if the question  
22 that is asked, do you support a voter ID law if you know the law  
23 will have a disproportionate impact on African-Americans and  
24 Hispanics, then I am told that those polls have indicated the  
25 answer is no.

1 BY MR. MORTARA:

2 Q. I want to talk a little bit about -- you mentioned on direct  
3 what you call the rich tradition of African-Americans voting in  
4 person. Do you remember that?

5 A. Yes.

6 Q. You talked about your -- was it your father?

7 A. My father.

8 Q. And you talked about even your wife, you said she votes in  
9 person as well?

10 A. Yes.

11 Q. And I want to talk a little bit about your household and ID  
12 possession.

13 A. Yes.

14 Q. You live in Houston, you said. Right?

15 A. That's correct.

16 Q. And you live in your district, you said it was basically an  
17 inner city district?

18 A. Yes.

19 Q. Do you have a valid Texas driver's license?

20 A. I do.

21 Q. And does your wife have a valid Texas driver's license?

22 A. Yes.

23 Q. And does your daughter, Maria, have a valid Texas driver's  
24 license?

25 A. Mariah does have a Texas driver's license.

1 Q. Please excuse me, Senator Ellis. That's the problem when  
2 Mr. Sweeten takes a deposition and I come up here, I just read  
3 the transcript.

4 And does your daughter, Nicole, have a valid Texas  
5 driver's license?

6 A. Yes, she does.

7 Q. Now, Senator Ellis, I've got to ask you to help me identify  
8 some people, and I'm going to show you a name. This is a little  
9 bit complicated because there's some personal identification  
10 here. I want to be aware of the Court's guidance. So I'm going  
11 to put something up on the computer that has some information,  
12 and then I'm going to hand you a piece of paper that has more  
13 and see if you can identify the person in this list.

14 MR. MORTARA: And for the Court's benefit, this that  
15 I'm about to show is an excerpt, an individual name from what  
16 will be on Plaintiff's Exhibit 1, which will be an encrypted  
17 data set given to the Court which will include  
18 Professor Ansolabehere's list of voters that allegedly do not  
19 have identification. The Witness doesn't need to be inquired  
20 about how that happened, I just want to show him a name from the  
21 list and see if he knows the person.

22 BY MR. MORTARA:

23 Q. And Senator Ellis --

24 JUDGE TATEL: Excuse me. This is a name from -- could  
25 you just say again where this name comes from.

1                   MR. MORTARA: It comes from Professor Ansolabehere's  
2 VRNID list. I just want to ask Senator Ellis if he knows this  
3 person.

4                   MR. DUNN: Objection, Your Honor.

5                   JUDGE COLLYER: There seem to be objections. It's your  
6 witness, sir. You get to speak first.

7                   MR. DUNN: I was going to yield to the gentle lady.  
8 The objection is that the cross-examination is outside of the  
9 scope.

10                  MR. MORTARA: Your Honor, we went through this  
11 yesterday.

12                  JUDGE COLLYER: Okay. Yes, ma'am.

13                  MS. MARANZANO: Your Honor, I was also going to object  
14 because we have no idea what list this is from.

15                  JUDGE COLLYER: My concern is that you have just  
16 testified, and counsel can't testify. So if you can get a  
17 stipulation as to what this is, then you're fine. If you can  
18 pin it to a document that's admitted, you're fine. If you can  
19 get the witness to identify it, that's fine. But you can't  
20 testify as to what it is.

21                  MR. MORTARA: Your Honor, you're absolutely correct.

22                  JUDGE COLLYER: Well, good.

23                  MR. MORTARA: That's why I'm showing the witness what  
24 will be from Plaintiff's Exhibit 1. The Justice Department gave  
25 us an exhibit deemed Plaintiff's Exhibit 1 --

1                   JUDGE COLLYER: But now you're testifying.

2                   MR. MORTARA: But Your Honor, just to be clear, this is  
3 a list of two million people. You cannot print it out --

4                   JUDGE COLLYER: Believe me, I'm sorry, you can get a  
5 stipulation from the Justice Department. If this comes from  
6 them, you get a stipulation. I'll wait.

7                   MR. MORTARA: Your Honor, I've been asking them since  
8 last Friday.

9                   JUDGE COLLYER: Well, all right.

10                  MR. MORTARA: And I said I need it by Monday morning  
11 when we start, and they said, "No."

12                  JUDGE COLLYER: Okay, okay, okay. Let's not argue  
13 about that here. Is there a reason why the Justice Department  
14 cannot identify this document as having come from the  
15 Justice Department?

16                  MS. MARANZANO: Your Honor, there are multiple  
17 databases at issue here, and I think this was just referred to  
18 as Dr. Ansolabehere's database, and we're not sure whether it's  
19 the list that contains 1.9 million names or 1.5 million names.

20                  JUDGE COLLYER: I can't actually hear you. Say that  
21 again. I heard up to the part about Dr. Ansolabehere's  
22 database, and then you said?

23                  MS. MARANZANO: Dr. Ansolabehere has two data sets that  
24 are at issue, there's one with 1.5 million names and one with  
25 1.9 million names, and we have no idea which data set --

1                   JUDGE COLLYER: Well, okay. Why don't we do this. Why  
2 don't you go somewhere else with your questioning. Why don't we  
3 have the font who knows all things and the font who knows all  
4 things talk to each other.

5                   MR. MORTARA: Your Honor, that would be great. These  
6 are my last questions for Senator Ellis, and unfortunately for  
7 Amanda --

8                   JUDGE COLLYER: She doesn't know.

9                   MR. MORTARA: -- the databases here are exclusively in  
10 the province of one or two attorneys over there and me over  
11 here. And the issue here -- I'll explain it.  
12 Professor Ansolabehere did give us two data sets; they both  
13 contain the exact same list of people. One of them has racial  
14 information in it, the other one does not. You can see on the  
15 screen right now that the exact same name of the file they gave  
16 us, records matched to Catalist for analysis. They know what  
17 file I'm talking about, they know how to look this up and what  
18 they're trying --

19                   JUDGE COLLYER: I can't say whether they do or don't.

20                   MR. MORTARA: They do.

21                   JUDGE COLLYER: Well, to be perfectly fair, I'm not  
22 sure you can. You might have capabilities that neither of the  
23 attorneys on the other side does.

24                   Okay. Can you not identify this as something from -- I  
25 mean, Mr. Freeman, you're the one with the hands-on stuff about

1       this, aren't you?

2                   MR. FREEMAN: Your Honor, from the information that's  
3       in front of us now -- and this is Dan Freeman for the  
4       Attorney General. From the information in front of me now, I  
5       can't tell if this is the complete data that was produced to the  
6       State as part of the underlying data to Dr. Ansolabehere's  
7       report, or whether this is Dr. Ansolabehere's final 1.5 million  
8       person VRNID list. And particularly the way that counsel is  
9       characterizing it has led to some confusion, because he's  
10      calling it Dr. Ansolabehere's list, but then he's telling us  
11      that there are nearly two million people on it. That would  
12      suggest that it's both, which it certainly can't be.

13                  MR. MORTARA: Your Honor --

14                  JUDGE COLLYER: Yeah, why don't we do this. I think  
15      Judge Tatel is right. Why don't we just have Senator Ellis, who  
16      is looking here very bemused, why don't we have Senator Ellis  
17      answer your questions, and then we can argue later about what  
18      this is and whether it's here and whether it should be here and  
19      whether the testimony should remain in or not. How is that?

20      Oh, that sounds so smart. Thank you, Judge Tatel.

21                  JUDGE TATEL: The Court of Appeals.

22                  JUDGE COLLYER: I knew we brought a Court of Appeals  
23      judge to the trial for a good reason.

24                  MR. MORTARA: Your Honor, thank you very much. I'm  
25      very much sorry. That was sort of what I was trying to do.

1                   JUDGE COLLYER: No, no, no, just questions. We need  
2 your questions.

3                   MR. MORTARA: Thank you very much.

4 BY MR. MORTARA:

5 Q. Senator Ellis, I'm now going to proceed, and the  
6 Justice Department is going to eventually figure out whether  
7 what I'm showing you is correct.

8                   JUDGE COLLYER: No comments. Questions.

9 BY MR. MORTARA:

10 Q. Now, you have a name on your screen, and I'm going to give  
11 you some supplemental information on a piece of paper that has  
12 even more personal information than is on the screen to help you  
13 identify the person that you're looking at.

14                   JUDGE COLLYER: I'm sorry. Now, that you really can't  
15 do.

16                   MR. MORTARA: It's just personal data that I've been  
17 instructed by the State of Texas not to put on a screen in the  
18 courtroom. It is the address of the person involved.

19                   MR. DUNN: Since the Senator is about to be handed a  
20 document that I don't have, would it be trouble if I stood next  
21 to him?

22                   JUDGE COLLYER: Absolutely not.

23                   MR. MORTARA: Your Honor, may I approach the bar?

24                   JUDGE WILKINS: Has this document been marked.

25                   MR. MORTARA: It's been marked Plaintiff's

1       Exhibit 1-Ellis 1, because it's an entry from Plaintiff's  
2       Exhibit 1.

3       BY MR. MORTARA:

4       Q. Mr. Dunn has given it to you?

5       A. Yes.

6       Q. Who is the person that's listed there?

7       A. Licia Ellis.

8       Q. Who is Licia Ellis who resides at the address on the piece  
9       of paper in front of you?

10      A. News to me. If she's at my house, I sure want to know about  
11       it.

12      Q. And why is that?

13      A. Because if the implication is that's my wife, her name is  
14       Licia Green, and her mother happens to be Caucasian but her  
15       father is black. She would be very offended if I identified  
16       this as her and said she was Caucasian.

17      Q. Thank you, Senator Ellis. That's what I'm getting at. So  
18       you're saying the entry here for a person whose address is what  
19       you just confirmed is your home address, whose name is Licia,  
20       your wife's name is Licia. Right?

21      A. That's correct.

22      Q. And what is your wife's middle name now?

23      A. Ann.

24      Q. And the middle name here is shown as Ann, and I'm not going  
25       to say the birth date, but can you confirm the birth date is

1 your wife's birth date?

2 A. Now, you're going to get me in divorce court, young man.

3 You've gone too far now.

4 Q. I'm not putting the birthday on the record, Senator, but  
5 that is your wife's birthday. Correct?

6 A. Might be.

7 JUDGE COLLYER: On a bad day.

8 THE WITNESS: I take the Fifth Amendment on that.

9 BY MR. MORTARA:

10 Q. And her last name there is Ellis. Correct?

11 A. That is what it says here.

12 Q. And the problem you have in part is that her last name right  
13 now, according to you, is Green. Right?

14 A. (Nodding.)

15 Q. And the race is listed for this person --

16 JUDGE WILKINS: You have to verbally respond.

17 THE WITNESS: Yes.

18 BY MR. MORTARA:

19 Q. And the race that's listed for this person in the database  
20 that I'm showing you is Caucasian.

21 A. That's correct.

22 Q. And that's not true for your wife, is it?

23 A. She doesn't consider herself Caucasian.

24 Q. Let me just ask you this: What's the name on your wife's  
25 driver's license?

1 A. I haven't looked at it lately.

2 Q. If I showed you a document from the Department of Public  
3 Safety, would that refresh your recollection as to the name on  
4 your wife's driver's license?

5 A. It may be the name on it, but to be honest with you, I  
6 haven't looked at her driver's license.

7 MR. MORTARA: Your Honor, may I attempt to refresh the  
8 witness' recollection with a document from the Department of  
9 Public Safety?

10 JUDGE COLLYER: Well, he hasn't said that it will  
11 refresh his recollection.

12 MR. MORTARA: I thought he said it might.

13 A. It may be her driver's license, but I don't know how you do  
14 in your household, but I don't ask my wife for ID before she  
15 comes in.

16 MR. MORTARA: Senator Ellis, I think you might get me  
17 divorced.

18 BY MR. MORTARA:

19 Q. Your wife, as far as you know, uses the legal name  
20 Licia Green?

21 A. That's correct.

22 Q. And you have no reason to believe that's not the name on her  
23 driver's license?

24 A. I have no reason to believe that.

25 Q. But you don't know what name she's registered to vote under,

1 do you?

2 A. I would have no earthly idea. I vote early.

3 Q. Now, I want to show you another list of names from this  
4 database.

5 MR. MORTARA: And that will be it, Your Honor.

6 BY MR. MORTARA:

7 Q. And you can see I'm just going to change Licia here to  
8 Nicole. You have a daughter called Nicole. Right?

9 A. That's correct.

10 Q. And with the same procedure, we have what's marked  
11 PX 1-Ellis 2, and what you can see on the screen, Senator, is  
12 three names, three Nicole Ellises, and I want to ask you about  
13 the one in the middle at the address that you see there. Do you  
14 know who that person is?

15 A. I'm not sure. This is obviously not a yes or no answer. It  
16 has her listed as Caucasian.

17 Q. The problem that you have is that the person in the middle  
18 you've identified basically as your daughter?

19 JUDGE COLLYER: He didn't. He didn't.

20 BY MR. MORTARA:

21 Q. Senator Ellis, other than the race, you would recognize the  
22 person in the middle as your daughter Nicole, whom you just  
23 testified has a Texas driver's license. Right?

24 A. I think that's the case. We've got a pretty full house of  
25 kids, so with her I'm not so sure. I have to check my

1       Blackberry on these birth dates. But other than Caucasian, that  
2       is my address and that is Nicole's first name. I don't know  
3       what that UNS is. What is that? Is that a middle name?

4       Q. Unfortunately, I'm not allowed to answer your questions.

5       A. That may be her.

6       Q. Thank you.

7                    MR. MORTARA: I have no further questions, Senator.

8                    JUDGE COLLYER: All right. Is there any redirect?

9                    MR. DUNN: There is short redirect, Your Honor.

10                   **REDIRECT EXAMINATION**

11                  BY MR. DUNN:

12        Q. Senator, I would like to take you back to the excerpt that  
13        Mr. Mortara showed you on the Senator Fraser debate --

14        A. Yes.

15        Q. -- where you said, "I understand that's your intent," or  
16        something like that to Senator Fraser. Is that right?

17        A. That's correct.

18        Q. What were you trying to do during the course of that  
19        discussion?

20        A. You know, it's a heated discussion. It's sort of like being  
21        polite, saying, "Hey, Senator, I understand this is what you're  
22        saying, but." So it would be comparable to when you see us  
23        debating in any legislative body, you say "the gentle person" or  
24        "my friend" or "I like to work with you," even when you don't  
25        mean it.

1 Q. Were you shortly after that offering an amendment?

2 A. I was.

3 Q. Despite what you said in the record, do you have reason to  
4 believe that the legislature's intent was different than you  
5 told Senator Fraser there on the Floor?

6 A. Yeah, I think the legislature's intent was to pass a bill  
7 that would have a disparate impact on the minorities. I know  
8 Senator Fraser didn't want to carry the bill.

9 Q. How do you know that, sir?

10 A. He's my friend, he's my desk mate. We talk all the time.  
11 During the process of the discussion I said, "Troy, why are you  
12 doing this?" And he said, "Hey, I drew the bean, it was my  
13 turn." I don't think his heart was really in it based on the  
14 answers he gave when I asked substantive questions about the  
15 impact as well.

16 Q. Thank you, Senator.

17 MR. MORTARA: Just a small issue of legislative  
18 privilege. The Senator has just testified about the  
19 conversation he just had with Senator Fraser. He also testified  
20 to some more conversations in his deposition. We had a motion  
21 in limine about this, about whether one senator could waive  
22 another's privilege or whether it's got to be a joint waiver. I  
23 just want to advise the Court of that issue. I'm sure the Court  
24 can take it for all it's worth.

25 JUDGE COLLYER: Thank you.

1 MR. DUNN: May I respond briefly?

2 JUDGE COLLYER: Yes.

3 MR. DUNN: I can't say it quite as artfully as  
4 Mr. Mortara, but something about opening doors and not liking  
5 what's behind it. The question was about Senator Fraser's  
6 intent on the Floor. That's what the cross-examination was  
7 about, and I think he opened the door to the answer.

8 MR. MORTARA: Your Honor, that is false. That was a  
9 public statement in the Community of the Whole.

10 JUDGE COLLYER: Wait, wait, one was public and one may  
11 have been just between them. The substance, however, is  
12 correct.

13 MR. MORTARA: Correct.

14 JUDGE COLLYER: We'll figure it out.

15 MR. DUNN: Nothing further, Your Honor, on this  
16 witness.

17 And I happen to have the next witness.

18 JUDGE COLLYER: And you happen to have the next witness  
19 too. Oh, I'm sorry, the United States.

20 MS. MARANZANO: Thank you, Your Honor. Just very  
21 briefly.

22 JUDGE COLLYER: It's a good thing there are good people  
23 around here to keep me straight.

24 REDIRECT EXAMINATION

25 BY MS. MARANZANO:

1 Q. Senator, do you believe you have an obligation to vote  
2 against bills that you believe are unlawful, even if they have  
3 popular support?

4 A. I do.

5 MR. MORTARA: Your Honor, this is outside the scope of  
6 my cross-examination by a mile.

7 MS. MARANZANO: I have nothing further. Thank you.

8 JUDGE COLLYER: Okay. Senator Ellis, it's nice to see  
9 you again, sir. Thank you very much.

10 THE WITNESS: My honor.

11 MR. DUNN: May I proceed?

12 JUDGE COLLYER: Please. Who is your next witness?

13 MR. DUNN: The Defendant Intervenors call Randall  
14 "Buck" Wood.

15 (Oath administered by Courtroom Clerk.)

16 (**RANDALL BUCK WOOD, DEFENDANT witness, having been duly sworn,**  
17 **testified as follows:)**

18 **DIRECT EXAMINATION**

19 BY MR. DUNN:

20 Q. All right, Mr. Wood, there's some water to your right.  
21 Would you please state your name?

22 A. Randall Buck Wood.

23 Q. For our record, would you spell that, sir?

24 A. R-A-N-D-A-L-L, B-U-C-K, W-O-O-D.

25 Q. Where are you from, sir?

1 A. I'm presently reside in Austin, Texas.

2 Q. And what type of business are you in?

3 A. I'm a lawyer.

4 Q. How long?

5 A. I was admitted to the bar in 1968.

6 Q. And Mr. Wood, as I'm sure you understand, the court has your  
7 CV and your report before them, so we're going to skip over some  
8 of these things, but I do want to talk a little bit about your  
9 background.

10 In terms of practicing law, what type of experience do  
11 you have on election matters?

12 A. In 1969 I was named the director of elections for the  
13 Secretary of State's Office in Texas, and I served in that  
14 capacity until 19 -- late 1972. Once I went into private  
15 practice, I have -- I am the busiest election lawyer in the  
16 State of Texas, and have been for many, many, years.

17 Q. Are some of the types of election matters you've handled  
18 called election contests?

19 A. Yes.

20 Q. Can you describe what those are to the Court?

21 A. Those are formal trials. They're technically not part of  
22 the judiciary system, but they're formal trials to try to  
23 determine who won on election or whether or not the election  
24 results can be determined.

25 Q. Do most of these contests occur in a court of law?

1 A. Yes.

2 Q. Are there also election contests that are adjudicated by the  
3 legislature?

4 A. If an election contest is brought in a general election,  
5 that is heard by the particular House or the Senate. The House  
6 or the Senate, wherever -- if it's a senator, it's tried to the  
7 Senate, if it's the a house, it's tried in the House.

8 Q. Have you handled contests in both of those bodies?

9 A. Yes.

10 Q. Have you handled contests around the state in judicial  
11 District Courts?

12 A. I don't know how many, but yes.

13 Q. Could you estimate for us?

14 A. More than 50.

15 Q. Are you aware of any other attorneys in the state that have  
16 done as much election experience as you?

17 A. No.

18 Q. Have you represented Republican and Democratic nominees?

19 A. Yes.

20 Q. What are some of the more noteworthy cases, or can you name  
21 one of the noteworthy cases that you handled?

22 A. One of them is a sort of famous case. A Republican  
23 candidate for the state Senate, his name is Jeff Wentworth, was  
24 disqualified by the Republican party on the basis of a  
25 constitutional provision, and I represented him, and it went all

1       the way to the Supreme Court and the Supreme Court reversed  
2       30 years of precedent and put him on the ballot.

3       Q. And you represented the Republican nominee there?

4       A. Yes.

5       Q. How many cases - an estimate - have you taken that are  
6       election related that has gone to the state Supreme Court?

7       A. Two dozen.

8       Q. Now, in the course of handling election matters, do people  
9       occasionally make the allegation that there's illegal voting  
10      going on?

11      A. That term "illegal voting," yeah, that's what you're doing.  
12      You're trying to determine if someone voted that was not  
13      eligible to vote, or if there are other procedures that happened  
14      during the election that could have affected the outcome of the  
15      election.

16      Q. Have you investigated illegal voting in the course of  
17      working on behalf of your private clients?

18      A. Before I ever take a case, either on a defendant's side or  
19      the plaintiff's side, I investigate the case, because these are  
20      very difficult cases to win. So usually, by the time the  
21      lawsuit is filed, a considerable investigation has been done,  
22      and in many instances, because of the investigation, the lawsuit  
23      is not filed.

24      Q. How many witnesses would you say you've deposed or  
25      interviewed or spoken with about illegal voting matters?

1 A. I know I've put more than a thousand voters on the stand,  
2 and in investigations, I'm sure there's another thousand or  
3 more.

4 Q. Now, there's been some testimony in this case about an  
5 election contest involving Donna Howard. Were you involved in  
6 that matter?

7 A. Yes, I was Donna Howard's lead counsel.

8 Q. When did what happen?

9 A. 2010.

10 Q. Would you describe the issues to the Court?

11 A. The election, it was over 50,000 people voted in the  
12 election, and it came down after a recount to 16 votes. The  
13 loser - not Ms. Howard, she was the winner - filed an election  
14 contest in the House of Representatives in Texas, and we spent  
15 two weeks in trial.

16 Now, the trial was actually before a committee and a  
17 master that was taking the testimony, and the allegations came  
18 down to some 35 people who appeared not to be eligible to vote.  
19 And that was the crux of the problem, whether these people were  
20 actually eligible to vote.

21 Q. So is it true, then, that in that case the Republican  
22 nominee alleged that there had been illegal voting?

23 A. Yes.

24 Q. Did you investigate that allegation?

25 A. We investigated it. We took it very seriously.

1 Q. What did you discover, if anything?

2 A. We discovered that there were a considerable number of  
3 people, in my experience, that were -- appeared to be ineligible  
4 to vote in that election, over 30. I think 28 of them actually  
5 took the stand in that case and testified.

6 Q. In the illegal voting you found, what kind of illegal voting  
7 was it?

8 A. It was almost exclusively -- in fact, I think it was  
9 exclusively people who had moved and were no longer eligible to  
10 vote in that race. They didn't reside in that district.

11 Q. Now, these case that you did discover of illegal out of  
12 county voters, was that reported in the newspapers?

13 A. This was -- of course, the race was in Austin,  
14 Travis County, so then the capitol is there. It was front page  
15 of the newspaper, one section or the other, and on television  
16 every night for more than two weeks.

17 Q. Have you seen any prosecutions of those out-of-county  
18 voters?

19 A. No.

20 Q. Now, are you aware -- are you aware of any techniques --  
21 well, strike that.

22 It's been stated here in testimony that it's difficult  
23 to discover illegal in-person voter impersonation. Do you agree  
24 with that?

25 A. No.

1 Q. Why not?

2 A. Because it's easy to determine that in any  
3 investigation. First of all, let me make this preliminary  
4 comment. I've never seen anybody impersonate someone else.  
5 I've heard of maybe one instance of it in 40-some odd years, but  
6 it really can't be done. One person might walk in somewhere on  
7 a lark and try to do that, but you can't do it on any sort of  
8 scale. You can't affect an outcome of an election or anything.

9 You can't do it in an organized fashion, you can't do  
10 it in a fraudulent fashion, because you would have to know if  
11 you were going to impersonate a voter, one, you would have to  
12 know if that voter has already voted, and if he has, obviously  
13 you're not going to go in and impersonate them. And you have to  
14 feel comfortable that that person is not going to come and vote  
15 later, and find out that person has already voted, because  
16 you'll get caught. So you have to know all of those things in  
17 order to do it.

18 And in my opinion, I'm not saying it never happens, but  
19 I've never, in 40-some odd years of being in elections, ever  
20 found somebody trying to impersonate somebody else.

21 Q. When somebody shows up to in-person vote, do they have to  
22 sign in?

23 A. Yes.

24 Q. Does the sign-in act as a tool that you use to look for  
25 illegal impersonation?

1 A. Oh, absolutely.

2 Q. In the course of your practice -- I want to make sure this  
3 is clear. In the course of your practice in the last 40 years,  
4 have you looked for extensively illegal in-person voter  
5 impersonation?

6 A. I have looked for it. One of the things you look for -- in  
7 Texas -- this hasn't happened -- it's not a common practice now,  
8 but it was many, many, years ago, where they would stuff the  
9 ballot box. And what they would do is at the end of the day,  
10 the election officials would go through and look at who hadn't  
11 turned up to vote, and they would sign them in and put a ballot  
12 in the ballot box, or in some cases a punch card or something of  
13 that nature, which means they would be doing it at the bottom of  
14 the list, the voter registration list. You go and look and see  
15 when the people signed in, and you start looking -- and it takes  
16 a few phone calls literally to determine that person said, "No,  
17 I didn't go vote," and in every instance I've ever tried, they  
18 say, "Sure I voted."

19 So it's not hard and it's something you can look for,  
20 and I will not -- I will say this: Since we look for things  
21 that would discover this kind of information, but it's not  
22 something you would spend an inordinate amount of time on  
23 because it doesn't exist.

24 Q. And when you find illegal voting, what do you find?

25 A. I'm sorry?

1 Q. When you do find illegal voting, what kind is it?

2 A. It's almost exclusively by mail, and people who do not  
3 reside in the particular jurisdiction and they're living in  
4 San Antonio and they've been living there 10 years and they're  
5 still voting at mama's house.

6 MR. DUNN: No further questions.

7 JUDGE COLLYER: Is there any other -- hold on. Any  
8 other defendant who would like to question this witness?

9 MR. WESTFALL: No, Your Honor.

10 MR. MORTARA: Same for us.

11 JUDGE COLLYER: All right. You are excused.

12 MR. MORTARA: Your Honor, I just wanted to take this  
13 opportunity to go through the issue that happened in  
14 Senator Ellis' deposition on cross, on the State's time, right  
15 now. We have an issue. Professor Ansolabehere is going to be  
16 here tomorrow, and I really want to talk to him about his list.  
17 And I gave it to the Justice Department last Friday, and I've  
18 been virtually begging them to agree that's the database. And  
19 they haven't done that. Tomorrow it is Professor Ansolabehere's  
20 cross, and I really do not want the Justice Department to be  
21 standing up challenging entries from the man's own data set that  
22 he gave us.

23 So I'm looking for a solution here, and I'm seeking  
24 help, because the Justice Department has so far, day after day,  
25 since Friday or Saturday morning when I gave it to them, not

1 confirmed that's the list. And it's what they gave us, it's the  
2 data they gave us. I gave it back to them. It's the same  
3 thing.

4 I'm just having a little trouble here because I have to  
5 cross Professor Ansolabehere. The way we're going and the rate  
6 I'm talking right now, we're not going to have a lot of time,  
7 and, as you know, we believe, and it's our position, there are a  
8 lot of problems with the list.

9 JUDGE COLLYER: Okay. Who is going to speak for the  
10 United States? Ms. Westfall.

11 MS. WESTFALL: Yes, Your Honor. We are more than happy  
12 to have discussions with the State about whatever database he is  
13 relying upon to examine these fact witnesses, but we are  
14 unaware, when he's in the middle of an examination of a fact  
15 witness, which exhibit he's referring to, which database,  
16 whether it's the 1.5 million, whether it's the 1.9 million. So  
17 I don't think we need to discuss this in front of the Court.

18 JUDGE COLLYER: No, I appreciate the difference between  
19 the incident in the midst of the Senator Ellis' examination, or  
20 cross, and the underlying issue - slightly different, same  
21 relative - that Mr. Mortara is mentioning. He says he gave you  
22 a database on Saturday -- to someone. Forgive me, someone, and  
23 said, "Can you confirm that this is 'X' from Dr. Ansolabehere" -  
24 whatever "X" is supposed to be - and he's gotten no response.

25 MS. WESTFALL: This morning, Your Honor, we did produce

1       a clean copy of the database that had the errors removed to the  
2       State, and I think we should continue these discussions not  
3       before the Court but between each other.

4                   MR. MORTARA: Your Honor, if I may, on the State's  
5       time, there is a serious problem here, and the serious problem  
6       is that when I have discussions with them when you're not here,  
7       I do not get any answers. And the other serious problems is,  
8       Ms. Westfall herself does not know what's going on. The  
9       database we got this morning is not the databases that  
10      Professor Ansolabehere gave us. The database we got this  
11      morning are the rectified, cleaned driver's license database.

12                  I'm talking about his two lists of 1.893 million  
13      voters. They're the same list. One has race, one doesn't. The  
14      DOJ lawyers don't even realize that the two files  
15      Professor Ansolabehere gave us have the same number of entries  
16      and the same people in them. So convincing them that what they  
17      gave us is what they gave us is a virtual impossibility when  
18      they don't know what they gave us.

19                  I said to them, "Please, just give it back to me, give  
20      it back to me so you can confirm this is the right thing,  
21      re-serve it on me, put it on a hard drive, do something and I  
22      will swear as an officer of the court that what I'm looking at  
23      is the thing they gave me." They won't do that, they haven't  
24      done it, and this is critical for Professor Ansolabehere's  
25      cross. Because what's going on here is I want to show him that

1       there's real problems with this list, and they want to stop me.

2                  JUDGE COLLYER: Please, go ahead.

3                  JUDGE WILKINS: Ms. Westfall, did the Attorney General  
4       keep a copy of whatever it was that it produced to Texas?

5                  MS. WESTFALL: This morning on the driver's license?

6                  JUDGE WILKINS: No, no, whatever you originally  
7       produced to Texas from Dr. Ansolabehere.

8                  MS. WESTFALL: I am not, unfortunately, able to  
9       represent one way or the other -- I'm sure we did keep a copy.  
10      I'm confident that we would have kept a copy, but I don't have  
11      personal knowledge of that, and the attorneys who do are not in  
12      the courtroom at present.

13                 We're happy to have discussions with the State when we  
14       have the right people together in the room.

15                 JUDGE COLLYER: Well, why don't we do this. Why don't  
16       we do this. With respect to the United States of America, it  
17       has numerous people, some of whom are very computer intelligent,  
18       in the room. And maybe one of those persons could leave the  
19       room and go to a part of the courthouse like the annex, atrium,  
20       where you can actually get a telephone to work, and you can say  
21       to somebody who knows the answer to this question: What is the  
22       answer to this question posed by the State of Texas?

23                 It seems to me -- it seems to me to be a legitimate  
24       question that's being posed by Mr. Mortara, and he just needs to  
25       get an answer: Yes, that is, yes, it is, I admit it is,

1 whatever it is you want to know.

2 Now, if you -- are you handling the next witness? Who  
3 is the next witness?

4 MR. MORTARA: No, Your Honor, I think the next witness  
5 is --

6 MR. ROSENBERG: He'll be from the Defendant Intervenor,  
7 Your Honor.

8 JUDGE COLLYER: Are you handling it?

9 MR. MORTARA: Assuredly not, Your Honor. I'm not  
10 allowed to handle any witnesses other than Senator Ellis for a  
11 few minutes and Professor Ansolabehere from now on.

12 JUDGE COLLYER: I don't know who is making the calls,  
13 but clearly a very smart person.

14 MR. MORTARA: That would be me, Your Honor.

15 JUDGE COLLYER: That was a joke. I just want the  
16 record to be clear that I had a smile on my face when I said  
17 that.

18 All right. Who is the smart person on behalf of the  
19 United States of America who is going to walk down the hallway  
20 to where the annex is and make this phone call?

21 MS. WESTFALL: That would be me, Your Honor.

22 JUDGE COLLYER: You don't speak computer.

23 MS. WESTFALL: But I need to consult with other  
24 attorneys in the office.

25 JUDGE COLLYER: Okay. Then you go together.

1 MS. WESTFALL: On an unrelated issue, while I'm before  
2 the podium, I wanted to advise the Court that we've had more  
3 harmonious discussions about exhibits, and I would like to  
4 advise the Court that we have -- the parties have agreed that if  
5 we have any objections to any of the exhibits on each other's  
6 trial exhibit lists, that we will notify each other by Thursday.  
7 Is it okay and permissible to the Court to file a notice that  
8 lists any objections to exhibits this evening or by tomorrow?

9 JUDGE COLLYER: Sounds wonderful.

10 MS. WESTFALL: Wonderful. We do have agreement on  
11 something.

12 JUDGE COLLYER: You're going to call your next witness?

13 MR. ROSENBERG: Ezra Rosenberg from Dechert on behalf  
14 of Defendant Intervenors. The next witness will be  
15 Dr. Henry Flores, who will be presented by Jorge Sanchez from  
16 MALDEF.

17 (Oath administered by Courtroom Clerk.)

18 (HENRY FLORES, DEFENDANT witness, having been duly sworn,  
19 testified as follows:)

20 DIRECT EXAMINATION

21 BY MR. SANCHEZ:

22 Q. Good afternoon. Could you please state your name for the  
23 record?

24 A. Henry Flores.

25 Q. And Dr. Flores, what is your current occupation or

1 employment?

2 A. I'm the dean of the graduate school at St. Mary's University  
3 in San Antonio, Texas, and I'm also a professor of political  
4 science at the same university.

5 Q. And what kinds of -- what courses do you teach as a  
6 professor?

7 A. I teach research methods, statistics, sometimes Latino  
8 politics and election politics.

9 Q. And the research method class that you referenced, is that  
10 qualitative or quantitative research methods that you teach?

11 A. It includes both.

12 Q. You prepared a report for this case. Is that not correct?

13 A. That's correct.

14 Q. And in that report you highlight your past participation in  
15 litigation and your qualifications as well. Is that correct?

16 A. That's correct.

17 Q. Were you an expert for the Republican Party in the 1991  
18 Texas redistricting?

19 A. Yes, I was.

20 Q. Did you do other work for the Republican Party?

21 A. I've consulted with the Bexar County Republican Party from  
22 time to time on some election issues.

23 Q. When you were hired as an expert for this case, what is it  
24 that you were asked to study or consider?

25 A. I was asked to determine whether or not there was a racial

1 purpose behind the writing, the construction of Senate Bill 14.

2 Q. And your report has sections about changing demographics,  
3 about noncitizen voting fraud as a rationale for SB14, and one  
4 about the racially charged atmosphere around the 2011  
5 legislative session. Can you tell me about the changing  
6 demographics and its significance to your report?

7 A. Well, the State of Texas has been undergoing some dramatic  
8 demographic changes over the last 30, 40 years, but more  
9 importantly and most recently in the last 20 years. And it's  
10 become increasingly Latino. We are now a majority/minority  
11 state. Some projections, depending on who you're speaking to,  
12 indicate that the State of Texas is by 2020, 2030 will be a  
13 majority Latino state. The majority of infants born in Texas  
14 now are Latino.

15 So the important thing for me is that as I was doing  
16 the research, occasionally the issue of demographics would come  
17 up around the discussion during the consideration for various  
18 voter ID bills from 2005 to 2011.

19 Q. What was it about the way that the issue of changing  
20 demographics came up that you found significant for the  
21 conclusion that you reached in your report?

22 A. When looking at Senate Bill 14 specifically, I began my  
23 research by looking at the legislative record. I started really  
24 from the front end going backwards. I looked at the 82nd  
25 session in 2011, and the dialogue between the senators and

1       between the House members whenever the bill was being considered  
2       in either chamber kept speaking to it periodically.

3                     And then as I worked my way back, I actually ran across  
4       one particular incident where Representative Anchia had asked  
5       Representative Harless about the bill, and she just blurted out  
6       that the reason that they were considering voter ID was that the  
7       population demographics were changing and they had to pass that  
8       bill now to stop it.

9       Q. What role -- what is the role of noncitizen voting fraud in  
10      terms -- excuse me. Scratch that.

11                  Why is noncitizen voting fraud relevant to the context  
12      of SB14?

13       A. Well, when I was looking at the rationale and the  
14       legislative rationale for the passage or the writing of Senate  
15       Bill 14 and designing it the way it was, one issue that came up  
16       early on was -- in 2005, 2007, 2009 legislative sessions was the  
17       whole idea that voter identification was important to act as a  
18       deterrent to voting fraud, massive voting fraud. As a matter of  
19       fact, in every legislative session there's some reference to the  
20       massive voting fraud being committed by illegal immigrants that  
21       are coming across the border.

22                  So I began to do research on voting fraud itself to  
23       find out what the incidents of voting fraud have been  
24       historically in the State of Texas, and it was minimal. I mean,  
25       I found one or two cases mentioned here or there in various

1       sources, but when you did see voting fraud, for the most part it  
2       was almost fraud that was perpetrated around mail-in ballots.

3                   So I didn't -- when I realized that, I said, well,  
4       voting fraud really then is not the real reason for the passage  
5       of the bill, and I started looking for other reasons.

6       Q. And what did you conclude those other reasons were?

7       A. Well, given all the rhetoric that was going on in the  
8       various legislative sessions, it seemed to me that  
9       Senate Bill 14 -- Senate Bill 14 had been turned into an  
10      anti-immigration bill, and that they were passing voter  
11      identification to prevent immigrants from coming into the  
12      United States. And as we've heard from testimony earlier today,  
13      it's pretty hard to do in-person voting fraud as it is, let  
14      alone by one individual, let alone masses of undocumented people  
15      coming across the border at any given time.

16                  So that rhetoric, the more I thought about it, I said,  
17      well, you know, if this is what they're really after, the  
18      proponents of the bill, then where do illegal immigrants or  
19      undocumented workers come from in the State of Texas  
20      principally? They come from Mexico, they come from  
21      Latin America, so Senate Bill 14 in my own mind turned into an  
22      anti-Latino bill; and as a result, I concluded that was one of  
23      the reasons I concluded that race was at the heart of Senate  
24      Bill 14.

25       Q. One of the other sections of your report talks about the

1 atmosphere around the 2011 Texas legislative session. How does  
2 that factor into your report?

3 A. I don't remember which state representative mentioned this,  
4 I think it was Martinez Fischer who mentioned they're working in  
5 a pressure cooker-type of atmosphere. And one of the things I  
6 went and did was try to look at really what kind of atmosphere  
7 was surrounding the legislative session, and by some estimates,  
8 there were as many as 100 immigration bills filed, bills that --  
9 there was three bills on English as an official language, there  
10 was a bill that wanted all children in bilingual education  
11 classes identified by name, there was another bill that wanted  
12 to tax remittances to Mexico, Central America, and South America  
13 only. You know, I don't know why they didn't add Canada,  
14 Africa, Europe, and Asia, but it was very specifically, Mexico,  
15 Central America, and South America. You add them all up and  
16 you've got this entire environment, legislative environment,  
17 that together with the dialogue surrounding the passage of  
18 Senate Bill 14, and race was at the heart of the whole thing.

19 The layer outside the legislature is a layer of the  
20 social environment, mostly by the media, and you saw a lot of  
21 media speaking to -- there were press conferences, there was a  
22 couple of rallies held on the state capitol for instance that  
23 were captured on YouTube, and I think the Court saw that in the  
24 redistricting lawsuit. I'm not sure. Where one individual  
25 actually said that the reason they couldn't get any good

1 immigration bills passed in the State of Texas was because there  
2 were too many Hispanic legislators elected to office and they  
3 had to get rid of them all.

4 And really, that was the environment surrounding the  
5 legislature, so for me, race was at the heart of this entire  
6 thing. You know, frankly, I said this in my deposition, and I  
7 said this in my report, I've been through three rounds of  
8 redistricting and I've been observing Texas politics for  
9 30 years. I'm a native Texan, my grandfather was one of the  
10 founders of the LULAC, and I've never seen the environment in  
11 the state capitol as bad this year, as far as race is concerned,  
12 ever in my professional life.

13 Q. In your report you talk about this concept of anchoring as  
14 part of your methodology and how you arrived at your  
15 conclusions. Could you talk to me a little bit more about this  
16 concept?

17 A. Yeah, anchoring is -- comes out of the world of decision  
18 theory, and in a most recent book by Daniel Kahneman - I may  
19 have mispronounced his name - is a Nobel Laureate in Economic  
20 Sciences and he studies the way organizations and individuals  
21 make decisions about everyday life and strategic planning and  
22 budget, et cetera.

23 Anchoring is really the whole concept that whenever  
24 we're trying to make a decision, we're kind of anchored in one  
25 particular place. We have a starting point that we begin the

1 decision process from. The courts start with the law, for  
2 instance. You don't -- none of us really start with a blank  
3 slate on anything.

4 And for me, the Texas state legislature was anchored in  
5 the whole concept of race relations, and the way they viewed  
6 Latinos when they were considering and writing Senate Bill 14.  
7 So that was the foundation of what they were -- that was behind  
8 their thinking on this law.

9 Q. You also talk about in your report the shifting terminology  
10 or language, rhetoric used around these issues. Could you  
11 explain a little bit more about what the significance of that  
12 is?

13 A. I think Senator Ellis talked about southern genteelism, and  
14 I'll get to that in just a second. Essentially, as I said, I've  
15 been watching Texas politics for 30 years, and I've been a  
16 victim of racism periodically throughout my lifetime, and in the  
17 1950s, it was very clear what kind of language was used to talk  
18 about Latinos. I mean, we were called greasers, we were called  
19 beaners, we were called spics, we were called messcans. That  
20 verbiage has been left behind. That language has turned into  
21 Spanish surname and Hispanic and Mexicanos and Tejanos and  
22 Mexican-Americans. Now we've become -- it's what Eduardo  
23 Bonilla Silva writes about in his book, *White Supremacy and*  
24 *Racism*, when he talks about the language of silence really is  
25 what racism has turned into.

1                   In the state legislature, we've become illegal aliens,  
2       we've become voter fraud, we've become the integrity of the  
3       ballot, for all practical purposes. For me, the rhetoric of  
4       racism has evolved from base language and base descriptions to  
5       silence, to other code words.

6       Q. And what does that silence accomplish?

7       A. What it accomplishes is really kind of warding off and  
8       avoiding real discussions about the legality of -- and the  
9       reality of the law. And it's played out in the legislative  
10      record. I counted -- on March 23rd, for instance, in 2011, in  
11      the *House Journal*, there are at least three instances where  
12      Representative Raymond, Representative Veasey, and I think maybe  
13      it was Representative Raymond - again, it might have been  
14      Martinez Fischer - actually tried to engage  
15      Representative Harless, who was the author of the bill, or was  
16      carrying the bill in the House, actually attempted to engage her  
17      in the whole issue of whether or not Senate Bill 14 violated the  
18      Voting Rights Act. She finally admitted that the State of Texas  
19      was under Section 5 of the Voting Rights Act, but she did not  
20      want to discuss the issue of whether or not Senate Bill 14  
21      violated the Voting Rights Act per se. As a matter of fact, at  
22      one point she just simply said, "This is an issue for the  
23      federal courts. We don't need to be considering this here," and  
24      then the discussion just moved on.

25                   So it was just silence. Really, for me I interpreted

1       it as a complete avoidance of the discussion of racism  
2       surrounding this bill.

3       Q. Although the State of Texas has never put forth the  
4       rationale of partisan politics as the reason why it passed SB14,  
5       there has been some issue about whether or not partisanship or  
6       racism was what was driving this bill. Do you have an opinion  
7       on this matter?

8       A. I don't know. You know, I was going to be flippant about  
9       it, but I'm not going to do that. You know, the partisan issue  
10      to me is a by-product of really what's going on. This bill --  
11      and if you listened to the testimony, for instance, of  
12      Ms. Camarillo earlier, and the work of Southwest Voter, they're  
13      focused on registering brand new first time voters. If this  
14      bill were to come into effect, this bill would not even allow a  
15      whole array of 18-year olds that -- we have a population of  
16      18-year olds being eligible to vote every day, every day across  
17      the state. If this bill goes into effect, this builds a wall  
18      against those 18-year olds. They're not going to be able to  
19      register to vote.

20                   MR. FREDERICK: I object to this testimony. This was  
21       not disclosed in Dr. Flores' report. He specifically said he  
22       does not offer any opinion on effect. I move to strike this  
23       testimony.

24                   JUDGE COLLYER: All right. Why don't we take that  
25       under consideration. We'll just continue. But I appreciate the

1 point you've made. You can go ahead, sir.

2 BY MR. SANCHEZ:

3 Q. Let me change gears here a little bit. One of the documents  
4 that you reviewed in preparing your report was the expert report  
5 that was prepared by Dr. Engstrom in this matter. Is that not  
6 correct?

7 A. That's correct.

8 (OFF THE RECORD.)

9 BY MR. SANCHEZ:

10 Q. We're looking at page 10 of Dr. Engstrom's report, and I  
11 just want to highlight a little bit of this for you and I want  
12 you to have a look at this paragraph. If you could read it to  
13 yourself.

14 A. Did you want me to read it?

15 Q. If you could read it to yourself, and then I have a question  
16 or two to ask you about it.

17 A. Sorry. (Witness complies.)

18 JUDGE WILKINS: Is there an exhibit number for this  
19 report?

20 MR. SANCHEZ yes. It's Defendant Intervenor's Exhibit  
21 Number 2, and it is a DIA 6 through 84.

22 JUDGE TATEL: Counsel, why don't you ask him to read it  
23 out loud?

24 BY MR. SANCHEZ:

25 Q. Would you please read it out loud?

1       A. Certainly. "Latinos in South Texas have been highly  
2       cohesive in their candidate preferences for Latino candidates in  
3       both general elections and Democratic primaries. They were also  
4       cohesive in their support for Latino candidate for Railroad  
5       Commission in the 2010 Republican primary. This preference was  
6       shared in only one general election, and not in any of the  
7       primary elections. In short, in only one of the 17 general or  
8       primary elections did Latinos and non-Latino voters in the  
9       county share a preference for a Latino candidate. The analyses  
10      of these elections, held over the last three election years, and  
11      for a variety of offices, reveal the presence of racially  
12      polarized voting in both general and primary elections across  
13      the 52 counties in South Texas."

14      Q. Now, general elections are between the two top vote getters  
15      in either party. Is that not correct?

16      A. That's correct.

17      Q. And a primary election is, by definition, an election  
18      between two members of the same party. Is that not correct?

19      A. At least two members of the same party.

20      Q. And so what Dr. Engstrom found was racially polarized voting  
21      in primary elections, where Republicans were running against  
22      Republicans or Democrats were running against Democrats. Is  
23      that not correct, according to this study?

24      A. That's correct.

25      Q. If you go through the study, there are numerous instances

1 where Dr. Engstrom finds the same thing. Is that not correct?

2 A. That's correct.

3 MR. SANCHEZ I don't have any further questions at this  
4 moment.

5 JUDGE COLLYER: All right. Is there anyone else from  
6 the defendants who wishes to question this witness?

7 MR. ROSENBERG: No, Your Honor.

8 JUDGE COLLYER: All right. Anybody from the State of  
9 Texas who wishes to do cross?

10 MR. FREDERICK: Yes, Your Honor.

11 JUDGE COLLYER: It's Mr. Frederick, isn't it?

12 MR. FREDERICK: Yes, Your Honor.

13 JUDGE COLLYER: This is Matthew Frederick from the  
14 Attorney General's Office.

15 MR. FREDERICK: I beg your pardon, Your Honor. If you  
16 give me one moment to set up, please.

17 JUDGE COLLYER: Uh-huh.

18 MR. FREDERICK: Thank you, Your Honor.

19 JUDGE COLLYER: Go right ahead when you're ready.

20 **CROSS-EXAMINATION**

21 BY MR. FREDERICK:

22 Q. Good afternoon, Dr. Flores.

23 A. Good afternoon.

24 Q. My name is Matt Frederick, I represent the State of Texas.  
25 I would like to ask you a few questions.

1               Now, you mentioned a moment ago in your testimony, you  
2 started to talk about the effect that you expected  
3 Senate Bill 14 to have. Isn't that right?

4 A. I said it could build a barrier.

5 Q. Now, you didn't actually provide an opinion on the effect of  
6 Senate Bill 14 in your report, did you?

7 A. No, I used the subjunctive, so I didn't do a study.

8 Q. You did no studies on the effect of SB14. Is that right?

9 A. That's correct.

10 Q. And you are not an expert on the effect of SB14, are you?

11 A. No.

12 Q. Dr. Flores, when you wrote your expert report in this case,  
13 you had not read the *Crawford* decision. Isn't that right?

14 A. That's correct.

15 Q. And yet you were designated to provide a report on the  
16 legislative intent behind Senate Bill 14. Is that right?

17 A. That's correct.

18 Q. And so when you wrote your report, you did not consider that  
19 the Supreme Court had endorsed specific nondiscriminatory  
20 purposes that might justify voter ID laws, did you?

21 MR. SANCHEZ: Objection. Calls for --

22 THE COURT: Could you come to the microphone, please.

23 MR. SANCHEZ: Calls for a legal conclusion from someone  
24 who has not been put forth as a legal expert.

25 JUDGE COLLYER: All right. Why don't you reframe your

1 question?

2 MR. FREDERICK: Of course.

3 BY MR. FREDERICK:

4 Q. Let me ask another question to begin. Before you wrote your  
5 report, you had read the *Arlington Heights* case. Is that right?

6 A. That's correct.

7 Q. And in fact, part of your report purports to apply the  
8 *Arlington Heights* factors. Is that right?

9 A. I used them as guidelines.

10 Q. You used them as guidelines. So you applied guidelines to  
11 render an expert report that you got from a Supreme Court  
12 decision. Is that right?

13 A. I used them as guidelines to look at the legislative  
14 process, the way the Texas legislature functioned in considering  
15 Senate Bill 14.

16 Q. And *Arlington Heights* wasn't about the Texas legislature,  
17 was it?

18 A. No, it was not.

19 Q. Right. And you didn't read -- are you aware of what  
20 *Crawford* is about now? It's about a Voter ID Bill in Indiana,  
21 isn't it?

22 A. That's correct.

23 Q. And you read parts of the *Crawford* decision during your  
24 deposition, didn't you?

25 A. Yes, I did.

1 Q. So you're now aware that *Crawford* -- in *Crawford* the  
2 Supreme Court identified deterring election fraud as a  
3 legitimate nondiscriminatory reason that might justify a voter  
4 ID law. Isn't that right?

5 MR. SANCHEZ: Same objection, Your Honor.

6 JUDGE COLLYER: I'll let him answer the question. I  
7 appreciate the objection. I'll let him answer the question,  
8 recognizing that he's not a lawyer.

9 A. Could you repeat your question, please?

10 BY MR. FREDERICK:

11 Q. Of course. Having read the *Crawford* opinion, you are aware  
12 now, are you not, that the Supreme Court identified the interest  
13 in deterring election fraud as a legitimate nondiscriminatory  
14 reason to adopt a voter ID law. Isn't that right?

15 A. That's correct.

16 Q. And having read *Crawford*, you are aware that the  
17 Supreme Court identified safeguarding voter confidence as a  
18 legitimate nondiscriminatory reason to adopt a voting ID law.  
19 Isn't that right?

20 A. That's correct.

21 Q. And you would agree, wouldn't you, that combatting voter  
22 fraud could be a nondiscriminatory purpose for enacting a voter  
23 ID law. Right?

24 A. It could be.

25 Q. And you would agree that promoting confidence in elections

1       is a legitimate nondiscriminatory reason for adopting a voter ID  
2       law, wouldn't you?

3       A. It could be.

4       Q. But you didn't consider those holdings from *Crawford* when  
5       you wrote your report, did you?

6       A. I was looking strictly at what the Texas state legislature  
7       was doing, and studying the rhetoric of the Texas state  
8       legislature.

9       Q. So that's a no?

10      A. I didn't look at the Indiana state legislature when they  
11       were passing their bill.

12      Q. And you didn't look at the *Crawford* decision, did you?

13      A. No.

14      Q. Having read *Crawford*, are you aware -- you are aware, aren't  
15       you, that the Supreme Court relied on a report by the  
16       Carter Baker Commission. Is that right?

17      A. Yes, they did.

18      Q. But when you wrote your report, you had not read the  
19       Carter Baker Report, had you?

20      A. That's correct.

21      Q. And because you can't know what the Carter Baker Report  
22       said, you couldn't say whether relying on the Carter Baker  
23       Report could provide evidence of a nondiscriminatory purpose,  
24       could you?

25      A. Not at that time.

1 Q. And it's your position that you can make a determination  
2 about purpose without reviewing what the effect of  
3 Senate Bill 14 might be. Isn't that right?

4 A. Yes.

5 Q. And you've testified that you aren't aware of any evidence  
6 of a nondiscriminatory purpose behind SB14. Isn't that right?

7 A. That's correct.

8 Q. In fact, your specific instructions before rendering your  
9 opinion were to look for evidence of a discriminatory purpose,  
10 weren't they?

11 A. That's incorrect.

12 Q. Do you recall when your deposition was taken in this case,  
13 Dr. Flores?

14 A. Yes.

15 Q. I'm going to read a portion of your deposition. I'm going  
16 to give you a copy to read along.

17 MR. FREDERICK: May I approach, Your Honor?

18 JUDGE COLLYER: Yes.

19 MR. SANCHEZ: What page is that?

20 MR. FREDERICK: Hang on one moment, and I'll give you a  
21 page. I'm reading from page 83, lines 10 to 12.

22 BY MR. FREDERICK:

23 Q. Question: "You were asked to look for evidence of a  
24 discriminatory purpose?"

25 Answer: "That's correct."

1                   That's your sworn testimony, isn't it?

2   A. That's correct.

3   Q. And the fact is, you didn't even look for evidence of a  
4   nondiscriminatory purpose, did you?

5   A. I didn't find any.

6   Q. Well, the fact is, you didn't look for any. Isn't that  
7   right?

8   A. I looked for some, and I didn't find any. I looked at data,  
9   and it just led me down this particular path.

10   Q. Still on page 83 I'm going to read another portion of your  
11   deposition. This is lines 13 through 17.

12                  Question: "You were not asked to look for evidence of  
13   the purpose of Senate Bill 14, whatever that might be -- that  
14   purpose might be."

15                  Answer: "No, that's not what you asked. You asked  
16   nondiscriminatory purpose. I did not look for that."

17                  That's your sworn testimony, isn't it.

18   A. I think we were engaging in some communication issues at  
19   that particular part of the deposition, and we had to really  
20   kind of work things out. Because I didn't quite understand the  
21   way he worded the question, and I came back and he came back and  
22   I came back, and eventually we had to call a little time-out and  
23   redo the whole thing. The court reporter had to read back  
24   pieces of the deposition -- that happened like three times.

25   Q. That's your sworn testimony, isn't it?

1 A. Yes.

2 Q. Maybe we can clear some of this up.

3 Now, the reason that you didn't look for any evidence  
4 of discriminatory purpose is because your only instruction was  
5 to look for evidence of discriminatory purpose. Isn't that  
6 right?

7 A. No. If you look at my expert report, my charge was to look  
8 to see whether or not there was a racial purpose behind the  
9 bill. As a matter of fact, I say so later on in the deposition,  
10 during the regular questioning and in redirect my attorney came  
11 back and cleared that up as well, because of the  
12 misunderstanding in communication between me and Mr. Aston.

13 Q. I understand. I want to read another portion of your  
14 deposition. This starts at page 82, line 25, continuing through  
15 page 83, line 6. This is on line 25.

16 "You were asked to write a report on the purpose of  
17 Senate Bill 14. Why didn't" -- "You were asked to write a  
18 report on the purpose of Senate Bill 14. Why didn't you look to  
19 see if there was any evidence of a nondiscriminatory purpose?"

20 Answer: "Because I was asked to look if there was  
21 evidence for discriminatory purpose, and so that's what I was  
22 looking for. And while I was in that search, I didn't see  
23 evidence of the other sort."

24 That's your sworn testimony. Correct?

25 A. Again, that was part of the miscommunication that was going

1 on between me and Mr. Aston, and I couldn't --

2 Q. I need you to just stick to my question, because I'm under  
3 severe time constraints.

4 JUDGE COLLYER: I'm sorry, he's allowed to answer your  
5 question, though, so let him finish.

6 MR. FREDERICK: Thank you, Your Honor.

7 A. And later in the deposition I clarified that statement,  
8 that, in fact, my charge was what the charge says in my expert  
9 report, that I was charged to see whether or not there was a  
10 racial purpose behind Senate Bill 14. My attorney also came  
11 back later at the end of the deposition and clarified that.

12 BY MR. FREDERICK:

13 Q. I have one more question. You weren't retained to get a  
14 complete and full picture of any and all purposes behind Senate  
15 Bill 14, were you?

16 A. I was retained, as I explained in my expert report and what  
17 I've said before the Court today, to see whether or not there  
18 was a racial purpose behind Senate Bill 14.

19 Q. I'm going to read one last part of your deposition. This is  
20 page 84, lines 19 to 22.

21 Question: "Would you agree that to get a complete and  
22 full picture of any and all purposes beyond -- behind Senate  
23 Bill 14, an analysis of all purposes would be done?"

24 Answer: "Maybe. But that wasn't why I was retained."

25 Is that your sworn testimony.

1 A. I already have testified to why I was retained.

2 MR. FREDERICK: No further questions.

3 JUDGE COLLYER: Thank you, sir. I think you have a  
4 colleague who wants to show you something.

5 MR. SANCHEZ: I only have a couple of questions.

6 JUDGE COLLYER: All right. A couple of questions.

7 MR. SANCHEZ: A minor indulgence.

8 **REDIRECT EXAMINATION**

9 BY MR. SANCHEZ:

10 Q. Is Indiana a Section 5 covered state, to your knowledge,  
11 Dr. Flores?

12 A. Not to my knowledge.

13 Q. And I just wanted to put in front of you -- this is a  
14 portion of your deposition, it's page 168, and I wanted to draw  
15 your attention to this exchange here.

16 The question is: "If these members stated that they  
17 were not aware of any member of the body who voted with a  
18 discriminatory purpose, would that be something that you would  
19 factor into your analysis?"

20 And could you read what your response was?

21 A. "What I would do in a situation like that, in compiling my  
22 expert report, if I had uncovered something like that, very  
23 clearly, just the way you stated, the hypothetical case that you  
24 stated, I would seek an interview with him or her and asked  
25 them, 'How did you know this?' And try to get more depth to

1       that particular response."

2       Q. So you would at least look into it, was the next question?

3       A. "Well, yeah, I mean, I was -- I was -- I was charged to seek  
4       whether -- whether there was racial purpose behind the  
5       legislation. And, of course, I would look into it.

6       Absolutely."

7                    MR. SANCHEZ: I don't have any further questions.

8                    JUDGE TATEL: I just have a quick question.

9       Dr. Flores, are you testifying that in your expert opinion that  
10      there is only a racial purpose behind the bill, or that race is  
11      one of the purposes behind the bill? What exactly is your  
12      opinion on that?

13                  THE WITNESS: Well, it is the central purpose behind  
14      the bill. I don't know if there are any other purposes,  
15      Your Honor, because I was only asked to see whether or not there  
16      was a racial purpose behind the bill. But to me, even though  
17      voter fraud and the integrity of the election system were used  
18      as the rationale, it turned out to be a superficial rationale,  
19      masking what I found to be a racial purpose behind the bill.

20                  JUDGE TATEL: And you're a political scientist. Right?

21                  THE WITNESS: Yes, Your Honor.

22                  JUDGE TATEL: I see. And to reach that judgment, you  
23      relied on the publicly available records. Right?

24                  THE WITNESS: Yes, Your Honor.

25                  JUDGE TATEL: Uh-huh. And what in the training of a

1 political scientist equips you to make a judgment about the  
2 racial motivation that that record reveals that the court  
3 couldn't make on its own? Do you understand my question?

4 THE WITNESS: Yes, Your Honor, I think I do.

5 Essentially what I did was, in my training as a statistician and  
6 a professor who teaches research methods and design, I created a  
7 research design so I could focus in on exactly what the  
8 legislature was doing. So to help me -- the design helped me to  
9 organize the data and evaluate what information both on a  
10 legislative record, in scholarly research, because I did look at  
11 some scholarly research, at the other expert reports. I looked  
12 at obviously a bunch of media, although you give that less  
13 weight. That just really speaks to some of the atmosphere  
14 around it. And if you recall, I also submitted an expert report  
15 in the Texas redistricting lawsuit, where I spoke to this  
16 particular concept.

17 So how to put together a very systematic structured  
18 design to look at this issue and look at the information and  
19 organize it as such is really what's in my background and  
20 training that allows me to do this.

21 JUDGE TATEL: And that's all in your report. Correct?

22 THE WITNESS: Yes, Your Honor.

23 JUDGE TATEL: And I don't want to use up any more of  
24 the State's time -- or the Intervenor's time. So the Court can  
25 read the report itself. Right?

1                   THE WITNESS: Yes, Your Honor.

2                   JUDGE TATEL: We can read all the materials that you,  
3 with your research skills, organized?

4                   THE WITNESS: Certainly, Your Honor.

5                   JUDGE TATEL: Setting aside your personal experience  
6 which you mentioned earlier, growing up in Texas, tell me once  
7 again what it is -- what is it that -- I understand organizing  
8 the materials, I understand all of that, organizing it,  
9 displaying it. Right?

10                  THE WITNESS: Yes, Your Honor.

11                  JUDGE TATEL: Research skill, I got that. But once  
12 that is done, what you've done in your report, what is it about  
13 the training of a political scientist that equips you to make  
14 the ultimate judgment about motivation? Or, to put it a  
15 different way, how would you look at that judgment any  
16 differently than this Court would, that question any differently  
17 than a court would?

18                  THE WITNESS: I'm not sure --

19                  JUDGE TATEL: Aren't we both evaluating the same record  
20 that you, through your research skills, have assembled?

21                  THE WITNESS: I'm not sure if we would look at it  
22 differently. Essentially, what it is about my training is that  
23 I've spent my professional career looking at Latino politics and  
24 Latino voting behavior, I've conducted surveys. So I was able  
25 to -- and I've studied the legislative process. I even took a

1 sabbatical and was a lobbyist for a semester in Austin to  
2 understand exactly how this whole process works.

3 So in my unique sort of situation, I understand what  
4 was going on in the Texas state legislature -- I'm a Texas  
5 political scientist, and I was able to understand it from that  
6 point of view, understand the rhetoric, understand the rules,  
7 the parliamentary rules, and how they deviated from the norm,  
8 understand the whole racial environment of the state and the  
9 politics thereof, so that I could bring that experience and all  
10 those years of research, put it in the right research design  
11 framework, so that I could present it to you in Court.

12 Now, you'll come probably obviously from a much  
13 different point of view than I will come at it. Whether or not  
14 we'll reach the same conclusion, Your Honor, obviously I can't  
15 comment on that because that's -- you will look at it from a  
16 constitutional/legal point of view, and I'm not a lawyer, I'm  
17 not a judge. I can just look at it from my own political  
18 science point of view as an expert in Latino politics and  
19 research design and techniques.

20 JUDGE TATEL: Thank you, Doctor.

21 THE WITNESS: Thank you, Your Honor.

22 JUDGE COLLYER: I had one other question. Forgive me.  
23 Earlier in your testimony, Dr. Flores, you testified to  
24 questions that Representative, I think it's Anchia, was  
25 directing to Representative Harless. Are they Representatives

1 or Senators?

2 THE WITNESS: No, they're Representatives.

3 JUDGE COLLYER: That's what I thought. About voter ID,  
4 and you referenced a response from her that with the demographic  
5 changes in the population, the legislature had to adopt voter ID  
6 now to stop it. Is that in your report so I can find it?

7 THE WITNESS: Yes, Your Honor, it is.

8 JUDGE COLLYER: Thank you. That's what I wanted to  
9 know.

10 MR. SANCHEZ: I have nothing further, Your Honor.

11 JUDGE COLLYER: Time to take a break. We'll be gone  
12 for 15 minutes.

13 (Recess taken at 4:01 p.m.)

14 MR. MORTARA: Your Honor, Mr. Sells is here from the  
15 Justice Department to I think negatively report on our  
16 discussions.

17 JUDGE COLLYER: Mr. Sells wasn't even part of your  
18 discussions. Anyway, go ahead, Mr. Sells.

19 MR. SELLS: Your Honor, for the record, Bryan Sells for  
20 the Attorney General, Eric Holder. It's my understanding that  
21 there's a dispute now about two files that are part of PX-1, and  
22 Mr. Mortara will correct me if I misspeak. One is a version of  
23 the VRNID list that is matched to the Catalist database for race  
24 and potentially other information, and one version of the VRNID  
25 list that is not matched to the Catalist database. Is that

1       correct so far? Because I was not in the courtroom when there  
2       was an earlier colloquy. I want to make sure we're talking  
3       about the same files.

4                    MR. MORTARA: Your Honor, for the record, we have a  
5       variety of problems. Those are the two Professor Ansolabehere  
6       data sets that constitute a list of 1.893 million people that  
7       has been sometimes called -- yesterday that was called the  
8       VRNID. It includes in that database a list of about 268,000  
9       people that have, quote, "ambiguous driver's license status,"  
10      and a further list of 125,000 that are duplicates. You saw  
11      Mr. Ingram the first day of trial, he was in there twice. He's  
12      a duplicate. So that 1.893 million is the DOJ's entire list of  
13      people that they say may be affected by Senate Bill 14. It's  
14      the single most critical piece in the case. It is not two  
15      databases that have different lists. They're the same people.  
16      So I want to establish for the record -- and those are two that  
17      we have a problem with.

18                  We also would like the ability to show  
19      Professor Ansolabehere entries from the driver's license  
20      database, one we produced to the intervenors that lacks full  
21      nine-digit Social Security numbers, which I also provided to the  
22      Justice Department on Saturday morning.

23                  JUDGE COLLYER: All right. Go ahead, Mr. Sells.

24                  MR. SELLS: I want to provide the court with some of  
25      the relevant chronology, at least with respect to the VRNID

1 lists first, and then we can talk about the other files.

2                 The parties held an ESI conference in March; at that  
3 time Texas was represented by its solicitor general,  
4 Jonathan Mitchell. And at that conference, Mr. Mitchell refused  
5 to put Texas' technical people on the line, and in fact refused  
6 to identify them. So the Department of Justice's technical  
7 people could not have a meeting of the minds with Texas'  
8 technical people to agree on a file format for the disclosure of  
9 electronically stored information.

10               As a result, on June 1st, the date of the expert report  
11 disclosure in this case, the Department of Justice disclosed  
12 Professor Ansolabehere's report, along with his data, in the  
13 format that Professor Ansolabehere used it. It is called Stata.  
14 Stata is a software program commonly used in the political  
15 sciences; I understand from Professor Sager that it is produced  
16 by the Texas A&M University. The file as an appendage .dta.

17               On Saturday, July 7th - just a few days ago -  
18 Mr. Mortara hand delivered to the Department of Justice a hard  
19 drive containing what he hoped would be a joint data exhibit.  
20 This was delivered to us Saturday at noon. We immediately put  
21 our technical staff examining that data, and with respect to the  
22 two files at issue, our legal and technical support person was  
23 able to determine that they are not the same files that we  
24 disclosed on June 1st. We don't know the nature of the  
25 difference, but we know that there's a very large difference in

1       the file size, and they're not in dta format.

2                  Our expert witness was in Spain. He just returned from  
3 Spain today. Our expert witness' assistant was a Sabbath  
4 observant over the weekend, and was not available until very  
5 late Sunday night. As soon as he got back on Sunday night, our  
6 expert witness' assistant went to work on other matters that  
7 Mr. Mortara has brought up, and maybe we'll talk about those as  
8 well.

9                  But what we think has happened is, now Mr. Mortara  
10 wants to cross-examine witnesses based upon those databases that  
11 our people have verified are not the data that we have produced  
12 to them. We're willing to put our legal/technical support  
13 people on the stand or with a declaration to say that, if  
14 necessary. But we think Mr. Mortara has an authentication  
15 problem. We will not stipulate to that data. He chose not to  
16 make the people who converted or modified that data at the  
17 Office of the Attorney General available as witnesses so they  
18 could be subject to cross-examination; the other possibility is  
19 he could have purchased Stata from the Texas A&M University so  
20 the data could be used in the native format. He chose not to do  
21 that, either.

22                  So I believe that's where we are with respect to those  
23 two files.

24                  JUDGE COLLYER: All right. Do you have, Mr. Mortara,  
25 any knowledge if the data on your hard drive is not in dta

1 format, what format it is?

2 MR. MORTARA: Your Honor, it's in what's called a text  
3 delimited file. I can explain and elaborate, and I would be  
4 pleased to take the State's time to do so.

5 JUDGE COLLYER: Well, I'm not the techie, so maybe one  
6 of my colleagues is. I'm not the techie. But the question is,  
7 if it's not in dta format, is there a question, a legitimate  
8 question, as to whether putting it in another format has in any  
9 way changed the file, its internal format or something, so that  
10 it seems bigger than the one you got?

11 MR. MORTARA: No, there's not, Your Honor. In fact,  
12 there's a basic explanation. But before I get there, let me  
13 elaborate as to certain issues that are, I don't think, in  
14 dispute.

15 JUDGE WILKINS: Can I just interrupt for one second?  
16 Did you mean comma delimited file or text delimited file?

17 MR. MORTARA: Your Honor, a comma delimited file, you  
18 can see on the ELMO here, will have data - which I'm using a  
19 scribbled line - and then a comma to delineate the columns in  
20 the data. A text delimited file is a sort of super set of  
21 comma, in the sense that sometimes you don't want to use commas  
22 because they could appear in the data themselves.

23 So, for instance, in the data that the  
24 Justice Department got back - which is identical entries to the  
25 dta file we got from Professor Ansolabehere - the delimiter is

1       the straight line character, and those delimiters, when you add  
2       them into the file, create the increased file size. It has  
3       nothing to do with additional entries, and of course they can  
4       confirm that. What Mr. Sells did not say is that the two files  
5       have exactly the same number of entries, because of course they  
6       contain exactly the same data.

7                  As to what software program to use, Stata is  
8       outrageously expensive --

9                  JUDGE COLLYER: I'm sorry. Believe me, that is so far  
10       beyond anything we can address here either at trial or right  
11       now. I don't want to hear about how expensive Stata is or  
12       anything else. Your position is that there are the same  
13       entries; it appears longer because it's a text delimited file  
14       with a parallel bar -- it's not parallel, but anyway.

15                  MR. MORTARA: It's the vertical bar character.

16                  JUDGE COLLYER: Vertical. Thank you. That's the term,  
17       vertical bar to separate instead of commas. All right.  
18       Dr. Ansolabehere will be here tomorrow. He'll be able to tell  
19       us. Dr. Ansolabehere's assistant would probably be able to tell  
20       us. He or she is not here. No one is here to tell us these  
21       things. But however it works, the techies for the Department of  
22       Justice say: We're not in a position to stipulate.

23                  Now, I can't say anything about that. If they don't  
24       think they can stipulate, they can get on the stand, maybe. I  
25       don't think we actually care. But if that's the way it's going

1 to work, then you can bring -- I'm sorry, the Department of  
2 Justice can bring. I didn't mean to make this personal to you,  
3 Mr. Sells. The Department of Justice can bring a hard drive  
4 computer, Dr. Ansolabehere's database; you can bring your  
5 computer, your database. You can say, okay, I'm going to look  
6 this up, and you can run your inquiry; and then DOJ can run the  
7 same inquiry and see if we come up with the same information.  
8 And if we do, tsk, there we are. If we don't, tsk, there we  
9 are.

10 MR. MORTARA: We would be totally happy with that,  
11 Your Honor. The only thing that I would add is, the Department  
12 of Justice is going to have potentially some difficulty making  
13 this work quickly. I would offer to help them and convert it to  
14 a good database format, which is called SQL, that I can help  
15 them with.

16 When I first started doing this, when I was getting my  
17 crash course over the weekend, the 25-million-person driver's  
18 license database, to search it for one person takes about  
19 65 seconds. Until you do -- I had the legal and technical  
20 support people. You heard about Oscar Viaz earlier. He  
21 actually is responsible for teaching me how to do this. And you  
22 can create some indices to speed up the searches. I could help  
23 them with that. But I'm totally happy for that, as long as it  
24 doesn't take five minutes every time I ask.

25 JUDGE COLLYER: That I can't speak to, whether they're

1 willing to have Mr. Viaz or someone else advise on how this can  
2 be shortened. That is not my issue. The issue is the integrity  
3 of the underlying data. And if Dr. Ansolabehere is satisfied  
4 with accepting the underlying data in the way you suggest, and  
5 he thinks, oh, that's fine, no difference, then that's fine, no  
6 difference. If the Department of Justice and/or  
7 Dr. Ansolabehere say, no, no, don't touch it because that will  
8 make a difference, then we wait. I don't know what to tell you  
9 to do. I don't have an answer.

10 MR. MORTARA: Your Honor, the only thing I would like  
11 to express is, this list is the basis for the  
12 Justice Department's discriminatory effect case. The entire  
13 basis is this list, and the quality of it is the entire basis of  
14 our opposition to the discriminatory effect case after you get  
15 past the social science literature, which we think is a  
16 threshold. It is extraordinarily critical to our case.

17 JUDGE COLLYER: I am not denying - I can't agree or  
18 deny - what you say. I accept that. Maybe we should put  
19 Dr. Ansolabehere on first in the morning, and if we don't get to  
20 anybody else tomorrow, we don't get to anybody else. Although  
21 there are two other witnesses tomorrow.

22 This is not a problem that the court can solve for you.  
23 The Department of Justice, for reasons expressed, is unwilling  
24 to stipulate. It says you've actually changed the data -  
25 perhaps not materially, but you have changed the data - and so

1       we can't stipulate or we won't stipulate that it's the same.

2       It's, quote, "not identical." The data may be the same, but  
3       it's in a slightly different format.

4                 When they say that to me, I can't say, no, no, no, you  
5       must stipulate. I can't do that. And I can't tell you, you  
6       have to use their database in the way that they did it, because  
7       no, no, no, you say wait, wait, wait, I've figured this one out.  
8       You've got to do that tomorrow, gentlemen, ladies. Ladies,  
9       gentlemen, gentlemen, good luck with it.

10                MR. MORTARA: Your Honor, I have an alternate procedure  
11       that I offered the Justice Department that I would like to  
12       inform the court of, which is that we would go through the  
13       examination and then we would file with the court a list of  
14       every single entry we looked at, and they could criticize them  
15       if they wanted. They won't, because these are exactly right.  
16       But they could criticize the entries and say they were wrong. I  
17       just have limited time here.

18                JUDGE COLLYER: The issue is -- believe me, I don't  
19       mean to make this any more difficult than it already is, and I  
20       appreciate that, Mr. Mortara. The issue is what  
21       Dr. Ansolabehere will say about it, not what I say about it,  
22       what you say about it, what you think about it. Ultimately what  
23       I think about it may add a little, but it's really whether  
24       Dr. Ansolabehere thinks you're treating his data properly. Just  
25       a second. Let me fix this.

1 MR. MORTARA: Your Honor --

2 JUDGE WILKINS: Hold on a minute.

3 JUDGE COLLYER: Questions.

4 JUDGE WILKINS: Mr. Mortara, just so I understand what  
5 it is you're trying to do, so we can solve the problem and move  
6 on, am I correct that what you want to be able to do tomorrow is  
7 to question Dr. Ansolabehere about whether a specific person --  
8 or I'm sorry, whether a specific entry is present in his VRNID  
9 data set with a record that matches someone who you believe  
10 actually does have some form of ID that could be used under  
11 SB14? Is that what you want to do?

12 MR. MORTARA: Yes. The only reason I'm hesitating a  
13 little bit is I'm trying to make sure that you have all the  
14 information. I'm going through my cross in my head, so I'm  
15 thinking about it.

16 Yes. For instance, Senator Ellis' wife is one that I  
17 would like to ask him about. Catalyst classified that person as  
18 Caucasian; Senator Ellis testified she's not. I want to ask him  
19 about that and just say, okay, now let's find the driver's  
20 license entry. She has a driver's license; that's what he said.  
21 Now let's move on. And ask him about Keith Ingram, why is he in  
22 there?

23 And there's two points to this, of course. One is that  
24 this is a list of 1.9 million people - 1.5, if you count their  
25 subgroup - and it's a huge number of people, but the odds that

1       it would be erroneously connected to two people in this trial,  
2       that's the point, obviously. So that's what I want to do.

3                  But there are a couple of other things, and I'm trying  
4       to think. I think generally what I want to do is show him a  
5       name on the list, and then be able to search in the driver's  
6       license database for a similar name, like Licia Ellis versus  
7       Licia Green, and prove that that person has a driver's license.

8                  JUDGE WILKINS: All right. Dr. Ansolabehere, is he  
9       going to be here tomorrow with anyone who has worked with him as  
10      far as these databases? Does he have like an assistant, and is  
11      that assistant going to be present in town tomorrow, Mr. Sells?

12                 MR. SELLS: Your Honor, he does have an assistant, and  
13      I am not aware that his assistant will be in town tomorrow. I  
14      don't think so, but I'm not certain.

15                 JUDGE WILKINS: All right. Will Dr. Ansolabehere have  
16      with him on a computer that he can bring to this courtroom his  
17      database, or the data that he used?

18                 MR. SELLS: I think that's unlikely, Your Honor, and I  
19      think that is because unlike in the redistricting trial, where  
20      the software is relatively compact, this data is a large piece  
21      of software, large data sets that cannot be easily transported.

22                 I could be wrong about that, too. That's not something  
23      I had a chance to ask him before I came over.

24                 JUDGE WILKINS: Well, here was my idea of how we  
25      resolve this - but we need to hear the next witness and move

1       on - is that Dr. Ansolabehere can bring his data, bring his  
2       computer, and bring his assistant, and when he's being  
3       questioned by Texas, his assistant can run the same query here,  
4       and if his assistant finds that, you know, based on  
5       Dr. Ansolabehere's data there's some different result, then the  
6       assistant can be called to testify to that. And if he doesn't,  
7       then we know that -- or you can reach a stipulation that the  
8       results would be the same.

9                  Or another way to do it is we could do Dr. Ansolabehere  
10      first, and he can be questioned, and then over the lunch break  
11      or whatever, if he has access to it, he can run those tests.  
12      And then, if he wants to come back after lunch and say, no, when  
13      I run the query, I come up with something different, then he can  
14      testify to that on kind of an out-of-order redirect or  
15      something, and then there could be some recross, if necessary,  
16      on that.

17                  But that was my way of trying to figure out how to do  
18      that. But I think that you need to have him, if he's got his  
19      data, or the ability to have the data and to do it, to bring it  
20      with him tomorrow, and if he's got an assistant or somebody else  
21      who can testify as a fact witness - not somebody on your legal  
22      team, where you're going to have a privilege or other issue -  
23      then have that person to be able to assist us so that we could  
24      try to expedite this.

25                  MR. MORTARA: Your Honor, Texas would love that

1 solution.

2 JUDGE COLLYER: Well, we don't know whether he's  
3 bringing someone with him, and it's probably too late, at 20 to  
4 5:00, to insist or to ask that he do so. If he has someone with  
5 him or if there's someone locally that he knows well enough,  
6 knows how he does his work well enough to assist him, that would  
7 be a great help to us all. Otherwise, we'll put in the first  
8 half of the database or something, and we just ask and see how  
9 far we can go to verify whether they're the same database.

10 MR. MORTARA: Your Honor, they could also check  
11 remotely. I mean, I know that we could do the fact witness over  
12 the telephone. They can definitely get this done. Mr. Sells  
13 has already told me they can load this database into  
14 Microsoft Excel. Obviously I have it walking around in my  
15 computer. This is highly portable stuff; I have the entire  
16 25,000,000 driver's license database on my computer.

17 JUDGE COLLYER: Well, don't tell anyone in Texas.

18 MR. MORTARA: Your Honor, for the record, you have no  
19 idea how hard it was for me to get ahold of this.

20 JUDGE COLLYER: Oh, my goodness. Well, it's hard for  
21 you to get ahold of it; try being Mr. Sells.

22 MR. MORTARA: I think it was hard for everybody, as  
23 Professor Sager testified. But the point of this is - and I  
24 don't mean to belabor it - the integrity of this list is the  
25 whole case on -- the whole their case on discriminatory effect.

1 Not all of our case. And if they can't allow us to ask him, "Is  
2 this person on your list," then we have a real problem.

3 JUDGE COLLYER: I don't think that your terminology  
4 quite understands the issue. It is not a question of, if they  
5 can't allow us to question him. The problem is that for good  
6 reason or ill, you have changed the data - not the data per se,  
7 but the format - therefore, the techies looking at it quickly  
8 can't say it's the same. And that's not their fault. It's not  
9 your fault, either; it just happens to be the truth of the  
10 matter.

11 And I'm accepting fully from you that the underlying  
12 data is in fact identical, but the format is not, and so  
13 somebody who worked with it in its original format of Stata or  
14 whatever it is cannot look at what you've done and say: Looks  
15 the same to me.

16 MR. SELLS: Your Honor, if I could respond to  
17 Judge Wilkins, I think before the end of the day I could find  
18 out if either or both of your scenarios is feasible, and report  
19 to the court just before we recess for the day. I would  
20 certainly be willing to do that.

21 JUDGE COLLYER: Okay. That would be great. Thank you.  
22 All right. Let's keep moving. I don't even know where  
23 we are, but something important was about to happen, I'm sure of  
24 it. We were on redirect -- no, did we finish? We finished. I  
25 excused the witness.

1                   Another witness, sir, an intervenor witness.

2                   MR. ROSENBERG: An intervenor witness, Your Honor.

3                   Ezra Rosenberg from Dechert, LLP for Texas State Conference of  
4                   NAACP branches and the Mexican-American Legislative Caucus. And  
5                   I would like to call to the stand Dr. David Marker.

6                   JUDGE COLLYER: All right. Dr. Marker, would you come  
7                   forward, please? I hope you were entertained, sir.

8                   (Oath administered by Courtroom Clerk.)

9                   JUDGE COLLYER: Before anybody gets too serious, sir,  
10                  are you a statistician?

11                  THE WITNESS: Yes.

12                  JUDGE COLLYER: Well, that's wonderful. Then you did  
13                  enjoy the last conversation.

14                  (**DR. DAVID MARKER, DEFENDANT witness, having been duly sworn,**  
15                  **testified as follows:)**

16                  **DIRECT EXAMINATION**

17                  BY MR. ROSENBERG:

18                  Q. Dr. Marker, could you briefly tell the court the nature --

19                  JUDGE COLLYER: Start with your name.

20                  BY MR. ROSENBERG:

21                  Q. Yes. Please identify yourself for the record, please.

22                  A. David Allen Marker.

23                  Q. Would you please explain to the court the nature of the  
24                  statistician work that you do?

25                  A. I'm a statistician that specializes in surveys. I've worked

1       for a company, Westat, for the last 28 years, and I do surveys;  
2       design the surveys, design the sample, oversee the data  
3       collection, the analysis, and supervise others who are doing  
4       that.

5       Q. And could you explain to the court the sort of surveys that  
6       you work with at Westat?

7       A. In general the surveys, almost all of them, are for the  
8       federal government. They are ones that have to achieve a high  
9       enough level of quality to support either government regulation  
10      or possible use in court cases, so they have to be of the  
11      highest caliber.

12                    MR. ROSENBERG: And Your Honors, DIX 07 is Dr. Marker's  
13       resume', which we've listed. We will be moving it into  
14       evidence. And without objection, I would offer Dr. Marker as an  
15       expert in survey work, survey research, sampling methodology,  
16       survey response rates, survey evaluation, and data analysis.

17                    MR. HUGHES: No objection.

18                    JUDGE COLLYER: All right. Without objection,  
19       Dr. Marker is received as an expert in surveys, extended as just  
20       described.

21                    MR. ROSENBERG: Thank you, Your Honor.

22       BY MR. ROSENBERG:

23       Q. Dr. Marker, did you review Dr. Shaw's surveys of  
24       Dr. Ansolabehere's 1.9 million list?

25       A. Yes, I did.

1 Q. And did you draw any conclusions after your review?

2 A. I did.

3 Q. And can you tell the court what your primary conclusion is  
4 about Dr. Shaw's survey?

5 A. My primary conclusion is that the response rate is  
6 exceedingly low, at approximately two percent, which is out of  
7 bounds with the surveys that are requested and used by the  
8 government.

9 Q. And when you use the phrase "response rate," could you  
10 briefly explain what you mean by that?

11 A. It's the amount of completed cases divided by the amount of  
12 cases you tried to reach that were eligible. So you exclude  
13 those who died and things like that.

14 Q. Are there potential problems with a response rate that, as  
15 you've described, it is extremely low?

16 A. Yes.

17 Q. And what are they?

18 A. That the data -- that if the people who responded to your  
19 survey are in important ways different from the ones who did not  
20 participate, then the estimates that you got are really  
21 irrelevant, that they will not at all reflect the underlying  
22 true overall population estimates that you're trying to  
23 understand.

24 Q. And does the appropriateness of a particular level of a  
25 response rate vary with the particular purpose of the survey?

1 A. It often can, yes.

2 Q. And can you explain how?

3 A. If the purpose of your survey is to help with marketing,  
4 market research, and you want to know -- 25 years ago we had a  
5 survey of how you eat your Oreo cookies and what you eat it  
6 with. If you're trying to develop a marketing strategy for  
7 that, you don't need a very high response rate to be able to  
8 understand -- to be able to guide the marketing strategy.

9           If you are looking at some of the planning of how to  
10 allocate resources in a political campaign - to use Dr. Shaw's  
11 example from earlier - then you don't have to be nearly as  
12 accurate, especially if you're looking at how things change over  
13 time, rather than estimating an actual level.

14           That is very different from when you are trying to  
15 understand and make policy and make decisions based on the  
16 survey data. Then you have to be much more careful.

17 Q. And in that latter context, what is the level of response  
18 rates that are typically seen?

19 A. So before anybody can do a survey for the federal  
20 government, under the auspices of the federal government, it  
21 must be approved by the Office of Management and Budget, and  
22 they have a guidance that is that the survey should try to  
23 achieve an 80 percent response rate, 8-0. They recognize that  
24 that's not always possible. It has gotten harder over time.  
25 And so they allow you to do lower response rate surveys, but you

1 must explain how you are going to try and maximize the response  
2 rate to get as close to 80 as possible, and what are you going  
3 to do to examine the nonresponse bias, potentially, from the  
4 lower response rate.

5 MR. ROSENBERG: And for the record, Your Honors, we  
6 have listed as DIX 119 the OMB guidelines, and specifically at  
7 page 1130.

8 BY MR. ROSENBERG:

9 Q. Have you ever seen a survey, Dr. Marker, used by  
10 governments -- used by the government that was based on as low a  
11 response rate as in Dr. Shaw's survey?

12 A. No.

13 Q. And what are the specific consequences in terms of the  
14 two percent or two percent to 2.5 percent response rate of  
15 Dr. Shaw's surveys in terms of the problems that you described  
16 earlier?

17 A. I don't know exactly --

18 Q. That was a poorly phrased question. I think you mentioned  
19 that you don't know as much about the remaining population.  
20 Could you explain what you meant to the court by that?

21 A. Sure. Let me start by saying what happens when you have a  
22 very high response rate. That makes it easier to compare. If  
23 you have a very high response rate, something like 80 percent,  
24 then even if the nonrespondents are different, what you have has  
25 reflected most of the population that's out there, so that the

1       truth for the whole population is going to be very close to what  
2       you come up for the 80 percent.

3                 When in contrast you only got responses from  
4       two percent of those you tried, and 98 percent did not  
5       participate, if they are not a very lucky representative sample,  
6       then what they got is going to be dominated by what the other  
7       98 percent do. And your two percent is not much better than  
8       guesswork, because the other 98 percent is going to dominate it.

9       Q. Now, Dr. Shaw this morning testified that his surveys had a  
10      margin of error on the general survey of plus or minus  
11      five percent. Doesn't that mean that there's no response with  
12      the respondent -- no problem with the response rate?

13       A. We have to separate two things. What he refers to as the  
14      margin of error - what in the survey research community the more  
15      careful terminology is the sampling error - is talking about how  
16      accurate an estimate of that many completed cases is. So he's  
17      basing it on his 600 or 1,000 completed cases.

18                 But it is very different if you tried to survey 1,200  
19      people and get 1,000 of them to participate, compared to if you  
20      tried, as he did, to get 44,000 people to participate and only  
21      1,000 do. Because again, the issue is not whether you have  
22      enough people to predict what those people really meant, it's  
23      how well do they reflect the general population you wanted to  
24      estimate.

25                 So the margin of error is only talking about the one

1 component; the sampling error due to the number of completed  
2 cases, and variance and bias - nonresponse bias and other forms  
3 of bias - are two very important separate components of the  
4 accuracy of a study.

5 Q. Well, couldn't the problems that you talk about be cured by  
6 weighting the results of the survey?

7 A. It would help.

8 Q. Did that occur here?

9 A. And it did not occur here. It would not ameliorate the  
10 whole problem, because there are two ways in which the  
11 nonresponse bias can be very important and have an impact.

12 The first is, if you over sample -- if you end up,  
13 because of the convenience, the fact that it was only people  
14 that were easy to reach that participated, that you end up with  
15 lots more, in this case, elderly and whites, then if you weight  
16 the data, you will try and reallocate so you get the right -- at  
17 least the right age distribution that you should have to match  
18 the population you were looking at, the 1.9 or 1.5 million.  
19 That will help. That will take into account if the elderly are  
20 significantly different with respect to voter ID from the young  
21 people. So that's why it helps.

22 But it only goes so far. The issue is, are the young  
23 people who responded, the two percent, are they like all of the  
24 other young people? Are the elderly who responded like the  
25 elderly who didn't? Are the blacks who responded like the

1       typical blacks? And that doesn't get help by weighting.

2       Q. And in any event, did Dr. Shaw weight -- provide the  
3           defendant intervenors or the court with a weighted analysis of  
4           Dr. Ansolabehere's 1.9 million list survey?

5       A. I have not seen such a thing.

6       Q. Are you familiar with the Pew study that Dr. Shaw testified  
7           about?

8       A. Yes.

9       Q. Does it stand for the proposition that the two percent  
10          response rate in Dr. Shaw's surveys produce acceptable results?

11       A. Not at all.

12       Q. And why not?

13       A. Well, first of all, the nine percent that the Pew standard  
14          survey is getting is four times the response rate that Dr. Shaw  
15          reported. The differences probably can be accounted for by a  
16          number of differences in methodology. The Pew standard  
17          methodology is to try everybody who they attempt to survey seven  
18          times during a five-day period, evenings, weekends, daytime, a  
19          variety of different times. It appears that Dr. Shaw's survey  
20          only attempted to reach people one time.

21           Second of all, the Pew survey uses cell phones and land  
22          lines; Dr. Shaw only did land lines. As we heard, cell phones  
23          are more expensive, they get a little bit less response rate  
24          than the land lines. So the Pew actually got more than  
25          nine percent from the land lines to get a nine percent overall.

1                   And then the biggest difference, even beyond the four  
2 times the response rate, is that the purpose of the Pew paper  
3 was not to compare the nine percent of their standard with the  
4 22 percent that they got from the more intensive survey that  
5 they reported, it was to compare and see how both of those did  
6 against what they call U.S. government surveys, which in their  
7 examples were either the current population survey or the  
8 American communities survey. Those are examples of surveys that  
9 get the high response rates that OMB demands that the government  
10 relies upon.

11                  And what Pew reported was that on many characteristics,  
12 their surveys, whether the nine or 22 percent, were able to  
13 match on what percent are Democrats and Republicans, what  
14 percent are poor and what percent are elderly, those kind of the  
15 issues. But they also found that on a number of key items  
16 generally related to civic engagements, civic connectedness,  
17 whether he did nine or 22 percent, even that extra telephone  
18 survey attempt was not sufficient and got you no closer to what  
19 you wanted.

20                  And we're not talking about one or two percent  
21 difference. The Pew surveys reported, I believe -- I would have  
22 to look to get the exact numbers, but I believe it was that  
23 31 percent of the people said that in the last year they had  
24 contacted a local elected official, where according to the  
25 government surveys, it's 10 percent. And the amount who talked

1 to their neighbors was reported at close to 60 percent, but  
2 according to the government it is only 40 percent.

3 So there are very major differences between what was  
4 being reported in the government survey.

5 Q. And that's even at a nine percent response rate?

6 A. And even at a 22 percent.

7 Q. You mentioned that the Pew study has a minimum of multiple  
8 calls. Is there also a difference between the standard  
9 methodology for Pew in terms of when those calls are made  
10 compared to what Dr. Shaw did?

11 A. I believe so. What Pew reported is similar in general  
12 approach to when we do telephone surveys, that you require that  
13 the interviewers -- you supervise the system so that you make  
14 sure calls are made at different times of day, different days of  
15 the week, so that you ensure that everybody has the opportunity,  
16 no matter when they work, what kind of work schedule they have.  
17 And in particular, also, you're trying to get people who are  
18 single persons, single adults in the household, so that there's  
19 a lot less time during the week that they are home than when you  
20 have multiple people in the household.

21 So by spreading that around, you get a much more  
22 representative sample. And as far as we can tell, Dr. Shaw's  
23 survey only included one attempt. I don't know when. It didn't  
24 say.

25 Q. Finally, Dr. Marker, based on your 30 years of experience,

1 do you consider Dr. Shaw's surveys a statistically valid  
2 scientific survey for the purpose of determining who among  
3 Dr. Ansolabehere's 1.9 million list do or do not possess the  
4 documents required by SB14?

5 A. I don't believe a two percent survey can provide  
6 statistically valid estimates.

7 MR. ROSENBERG: Thank you, Dr. Marker. I have no  
8 further questions. I pass the witness.

9 JUDGE COLLYER: Is there any other among defense  
10 counsel who wish to question this witness?

11 MS. WESTFALL: No, there isn't, Your Honor.

12 JUDGE COLLYER: All right. Mr. Hughes?

13 **CROSS-EXAMINATION**

14 BY MR. HUGHES:

15 Q. Good afternoon, Dr. Marker.

16 A. Good afternoon.

17 Q. We've met before. Nice to see you again.

18 You have not attempted to do your own survey in this  
19 case, have you?

20 A. Correct.

21 Q. And you're not offering any affirmative opinion in this  
22 case, are you? In other words, you're not suggesting that  
23 you're offering an opinion about whether Hispanic or Black  
24 registered voters in Texas possess the relevant forms of ID  
25 under SB14 at a lower rate than Anglo voters, are you?

1 A. That's correct.

2 Q. The only thing you've come here to testify about are  
3 concerns you have with Dr. Shaw's survey. Right?

4 A. Yes.

5 Q. And one thing you talked about in your direct examination  
6 are the kinds of surveys that you do at Westat for the federal  
7 government, typically. Right?

8 A. Yes.

9 Q. And you list some examples of those surveys in the report  
10 that you provided to the court, don't you?

11 A. Yes.

12 Q. One of them, I think, is about over-the-road truckers, the  
13 health of over-the-road truckers?

14 A. Yes.

15 Q. And the way that survey was conducted is, there were  
16 actually in-person interviewers that went to truck stops and  
17 talked to truckers. Right?

18 A. That's correct.

19 Q. And that survey was in the field for a number of months.  
20 Correct?

21 A. That survey was for a number of months in order to  
22 understand the seasonal variation in truck drivers.

23 Q. And another survey that you mentioned in your report - I  
24 think you mentioned four; we're going to talk about all of them  
25 briefly - is a survey of family day care center providers. Do

1 you recall that one?

2 A. Right.

3 Q. And that was a survey where participation was mandatory.

4 Right?

5 A. Correct.

6 Q. And you expect a higher response rate where you have to  
7 participate in the survey because you're receiving government  
8 benefits than you would from a telephone survey, wouldn't you?

9 A. Yes indeed.

10 Q. Okay. And another survey that you talk about in your report  
11 is of hydraulic fracking well operators. Right?

12 A. Yes.

13 Q. I might not have gotten that exactly right, but close  
14 enough. And no survey has been started on that, yet, right, has  
15 there? At least at the time of your deposition?

16 A. No, that's not correct. The survey to collect information  
17 on the sample of wells has been collected; the analysis has not  
18 been done yet.

19 Q. And again, that's an example where well operators that are  
20 being regulated or potentially regulated by the EPA are in a  
21 receipt of survey requests from the regulating agency, and they  
22 agree to participate in the survey. Right?

23 A. Yes.

24 Q. Again, a different situation than a telephone survey.  
25 Right?

1 A. Yes.

2 Q. Okay. And the other survey that you mentioned in your  
3 report is a survey I think that was conducted on an Indian  
4 reservation, where there was in-person interviews by  
5 Native American members of the same tribe that was being  
6 studied. Right?

7 A. That's correct.

8 Q. And the interviews lasted a long time, and the survey was in  
9 the field for over the course of a year. Right?

10 A. Again, the reason it was in the field for over a year was  
11 that there's concern about different eating patterns in  
12 different seasons. So we attempted to collect information every  
13 quarter, every three months, from each person.

14 Q. Now, you are not sure whether you've done a survey,  
15 telephone or otherwise, that was in the field for less than two  
16 weeks, are you?

17 A. That's true, telephone or otherwise.

18 Q. And in the field, just hopefully you can agree with me,  
19 that's the amount of time that the survey is taking place.  
20 Right?

21 A. The time during which you try to collect the data.

22 Q. And you agree that for certain types of questions, like  
23 public opinion, phone-based surveys that are in the field for a  
24 short period of time can get very good estimates. Right?

25 A. They can get estimates that achieve the necessary quality

1 for what they are designed for.

2 Q. And now I want to talk to you about your opinions concerning  
3 nonresponse bias. And what your opinion is, is because  
4 Professor Shaw's surveys have a low response rate, and because  
5 of the potential for nonresponse bias, your opinion is that the  
6 results of Professor Shaw's survey potentially could not be  
7 validly extrapolated to the target survey population. Correct?

8 A. I believe that's correct. If you could read it again, it  
9 probably wouldn't hurt.

10 Q. Because Professor Shaw's surveys have a low response rate,  
11 and because of the potential for nonresponse bias, your opinion  
12 is that the results of Professor Shaw's survey potentially could  
13 not be validly extrapolated to the target survey population.  
14 Correct?

15 A. Correct.

16 Q. And the basic idea, the concern about nonresponse bias, is  
17 that when you have a low response rate, you run the risk - as  
18 you've explained - that the responders to the survey are not  
19 representative of the target population?

20 A. Yes.

21 Q. And at the time of your deposition, you did not know one way  
22 or the other whether or not the survey responders to  
23 Professor Shaw's surveys are representative of the population  
24 that was the subject of those surveys. Right?

25 A. That's correct.

1 Q. And you did not disclose in your report in this case any  
2 effort to determine whether the responders to Professor Shaw's  
3 surveys were likely or unlikely to be representative of the  
4 population that was surveyed. Right?

5 A. That's correct, I did no data collection.

6 Q. And you have not disclosed any methodology or basis to  
7 determine whether the survey responders to Professor Shaw's  
8 surveys were likely or unlikely to be representative of the  
9 population surveyed. Right?

10 A. Say that one again.

11 Q. You have not disclosed any methodology or basis to determine  
12 whether the survey responders to Professor Shaw's surveys were  
13 likely or unlikely to be representative of the population  
14 surveyed.

15 JUDGE COLLYER: You almost want to write that one down.

16 THE WITNESS: What was that?

17 JUDGE COLLYER: I said, you almost want to write that  
18 one down.

19 THE WITNESS: Yeah.

20 A. Dr. Shaw attempted to demonstrate representative business  
21 through some of his comparisons in his statements and in his  
22 testimony this morning, and I reviewed some of those, and part  
23 of that was his reference to the Pew study, and I referenced it  
24 there.

25 So I think the answer is no to what you said, that we

1 have comparisons that we tried to make, but I didn't do any  
2 independent further evaluation, if that's what you're asking.

3 BY MR. HUGHES:

4 Q. I'm not sure I have an answer. I'm going to ask it one more  
5 time. You have not disclosed any methodology or basis to  
6 determine whether the survey responders to Professor Shaw's  
7 surveys were likely or unlikely to be representative of the  
8 population surveyed. Correct?

9 A. Again, the way that's worded, it sounds like we have no  
10 information on whether or not they are representative, and he  
11 has provided some information that has been discussed and that  
12 we discussed at the deposition.

13 JUDGE TATEL: Dr. Marker, this is pretty critical, so  
14 is your point that based on expert knowledge about response  
15 rates, that you don't need to do your own independent survey to  
16 know that a two percent response rate is an inadequate basis on  
17 which to make a judgment about the representativeness of the  
18 survey? Is that the point?

19 THE WITNESS: That is absolutely the point. And not  
20 making that as my own --

21 JUDGE TATEL: I understand.

22 THE WITNESS: Okay.

23 BY MR. HUGHES:

24 Q. Professor Marker, one final question that's somewhat similar  
25 to the last but slightly different. You have not even disclosed

1       a methodology to assess the likelihood one way or the other  
2       whether Professor Shaw's surveys are representative of the  
3       population surveyed, have you?

4       A. What's the difference between that and the previous  
5       question?

6       Q. May I hand you your deposition?

7       A. Sure.

8                   MR. HUGHES: May I approach, Your Honor?

9                   JUDGE COLLYER: Yes, yes.

10          BY MR. HUGHES:

11          Q. I'm going to start at page 128, line 17.

12                   MR. ROSENBERG: I'm sorry, what?

13                   MR. HUGHES: 128, line 17. Let me know when you're  
14       there.

15          BY MR. HUGHES:

16          Q. Question: "Again, you haven't done anything to assess the  
17       likelihood one way or the other --"

18                   And then you said, Answer: "As I said, I don't --"

19                   And Mr. Rosenberg said, "Hold on, let him finish the  
20       question."

21                   "Whether the survey responders to Professor Shaw's  
22       surveys are representative of the population surveyed. Right?"

23                   Answer: "Correct."

24                   Was that your sworn testimony?

25       A. Yes.

1 MR. HUGHES: No further questions.

2 MR. ROSENBERG: And just for the record, Mr. Hughes  
3 forgot to note that I did object to the form of that question  
4 that was asked, and I repeat that objection. Thank you.

5 JUDGE COLLYER: Okay. Was there any redirect? Yes,  
6 there is, hold on.

7 MR. ROSENBERG: No further questions. Thank you. And  
8 thank you, Dr. Marker.

9 JUDGE COLLYER: Just one second.

10 JUDGE TATEL: We don't have a jury here, so let's spend  
11 a minute on this. Mr. Hughes, are you up here? Because you're  
12 perfectly willing to correct me if I'm asking the wrong  
13 question. Okay?

14 MR. HUGHES: Yes, sir.

15 JUDGE TATEL: But as I understand the debate the two of  
16 you are having, is that Dr. Marker is saying that based on  
17 survey research, that his opinion is that a survey with a  
18 two percent response rate provides an inadequate basis for  
19 making a judgment about the representativeness of those who  
20 responded. You're asking him, I take it, whether or not there  
21 are -- he's done any independent research of any independent  
22 surveys of his own of Dr. Shaw's data to find out that it is in  
23 fact not representative. Is that your point?

24 MR. HUGHES: I think it's slightly different,  
25 Your Honor.

1                   JUDGE TATEL: I'm glad I asked. What's the difference?

2                   MR. HUGHES: So I think the debate is that the question  
3                   is in survey research whether there's a nonresponse bias. What  
4                   that means is, if you have a low response rate to the survey,  
5                   your concern is, are the responders representative of the rest  
6                   of the population.

7                   JUDGE TATEL: Right.

8                   MR. HUGHES: And what Dr. Marker admitted to me today  
9                   and in his deposition is that he didn't know one way or the  
10                  other whether the responders to Professor Shaw's surveys were  
11                  representative of the population that was being surveyed, and he  
12                  didn't disclose in his report any effort to determine whether  
13                  the responders of Professor Shaw's surveys were representative.  
14                  He just doesn't know.

15                  JUDGE TATEL: But how is that different from his  
16                  judgment that a two percent response rate is an inadequate basis  
17                  upon which to make that judgment, that that's what survey  
18                  research shows?

19                  MR. HUGHES: Well, I think that --

20                  JUDGE TATEL: Are we talking at cross purposes?

21                  MR. HUGHES: You may be accurately articulating  
22                  Dr. Marker's opinion, with which Professor Shaw disagrees.

23                  JUDGE TATEL: I'm not stating it myself, I'm just  
24                  trying to understand the debate the two of you are having. And  
25                  what I understand you saying is that he hasn't done any

1 independent survey to prove what he -- to prove his judgment  
2 that the two percent response rate is inadequate.

3 MR. HUGHES: And I think what I was trying to get at,  
4 Your Honor, is as Professor Shaw testified today, he said, okay,  
5 I've got a low response rate; let's look at the people I  
6 actually surveyed, and did I get people that make me feel  
7 comfortable extrapolating the results of my survey to the target  
8 population. So Professor Shaw did that, and his testimony  
9 speaks for itself, but he testified he was comfortable  
10 extrapolating the results to the target population.

11 All I was trying to elicit from the witness was that he  
12 hadn't done the same thing.

13 JUDGE TATEL: I'm glad you brought that up, because we  
14 don't have the transcript from this morning, and I wanted to ask  
15 Dr. Marker his reaction to exactly what you just said.

16 And correct me if I'm wrong, the way I heard  
17 Dr. Shaw -- correct me if I'm wrong, Mr. Hughes. What I heard  
18 Dr. Shaw say in response to your redirect this morning was that  
19 he said: Look, I understand it's a small response rate, but I  
20 looked at the responses and I see in those responses a group  
21 that looks pretty representative. Right?

22 MR. HUGHES: That's right, Your Honor.

23 JUDGE TATEL: That's what he said. He said: Look,  
24 I've looked at the list; we've got minorities, we've got  
25 elderly, we've got an economic mix. Right?

1 MR. HUGHES: Yeah, what he --

2 JUDGE TATEL: And that gives me comfort that this is a  
3 representative group even though it's only a two percent  
4 response rate. Right? And your point is, Dr. Marker didn't do  
5 that.

6 MR. HUGHES: Exactly.

7 JUDGE TATEL: But my question to you is, what do you  
8 think about Dr. Shaw's response? Does that give you any  
9 confidence that maybe even with a two percent response rate,  
10 he's got something on the basis of which he can make a judgment?

11 THE WITNESS: No, I don't believe he does. Because  
12 again, go back to Pew, which he brought up as the example. Pew  
13 has a much higher response rate than he does, matches on many  
14 more characteristics than he showed. He only looked at - or  
15 only reported looking at - the low income number. He knows that  
16 his numbers, he said, didn't match on elderly or on race or any  
17 of these other characteristics. And even when Pew matched on  
18 income, it was totally off on many other factors that maybe,  
19 maybe related to what we're talking about.

20 Another good example was even though it had the same --  
21 Pew had the right percentage poor, it had 17 percent -- well, it  
22 was way off -- Pew or the American Community survey, one has  
23 10 percent on food stamps and the other has 17 percent on food  
24 stamps. So even though their telephone survey at Pew was  
25 getting poor people, it wasn't getting a representative sample

1       of poor people, it was getting poor people who either had more  
2       or less use of food stamps. So at two percent, you don't go any  
3       further because it is so far removed.

4           And if I could give one simple example to show how far  
5       removed it is from government accepted surveys. There's a large  
6       scale telephone survey that Westat has done since its inception  
7       in the early '90s, the National Household Education survey.

8       It's a household survey, and originally it got 70, 73 percent  
9       response rates in the '90s. By the middle of the last decade,  
10      it got to 40 percent response rate.

11           The government said, that's too low, stop. We're not  
12      going to pay you for a 40 percent response rate because we can't  
13      tell about all the bias possibilities that are there. They  
14      spent a lot of money having us and others research, and now the  
15      Census Bureau has started doing it using alternative methods  
16      that they believe will get over 50 percent. 40 percent was  
17      just, stop the presses, we're not going to go any further.

18           So when you're presented with a two percent response  
19      rate, you don't do additional analyses, you just know that's not  
20      good enough. So that's why.

21           MR. HUGHES: Your Honor, if I may, since Dr. Shaw is  
22      not here to defend himself, in addition to looking at the people  
23      that were actually surveyed, particularly in the Hispanic and  
24      Black survey population, and determining that in those  
25      populations there were more lower socioeconomic and low

1 education level survey respondents than you expect to see in the  
2 rest of the population - so he said, okay, that gives me  
3 comfort - in addition to doing that and the other things he  
4 explained, one of the things we've got to keep in mind about the  
5 reason for the low response rate is the quality of  
6 Professor Ansolabehere's list. And we've already heard some  
7 testimony about dead people --

8 JUDGE TATEL: That's a different question.

9 MR. HUGHES: Okay. Well, that drives the response  
10 rate.

11 JUDGE TATEL: And Dr. Marker won't be back tomorrow.  
12 Is that right?

13 MR. ROSENBERG: No, we were not intending on it.

14 JUDGE TATEL: That's okay. Thank you.

15 MR. ROSENBERG: If I could ask just one follow-up  
16 question to this colloquy --

17 JUDGE COLLYER: Yes.

18 MR. ROSENBERG: -- without accepting some of  
19 Mr. Hughes' characterizations of what Dr. Shaw said this  
20 morning.

21 REDIRECT EXAMINATION

22 BY MR. ROSENBERG:

23 Q. Dr. Marker, were there other reasons as to why Dr. Shaw's  
24 explanation as to his responses, the sort of responses that he  
25 got, were not something that could be reliable in terms of the

1 weighting issues and the lack of a basis upon which to compare?

2 MR. HUGHES: I object, because I'm very leery of a new  
3 undisclosed opinion to which I have absolutely no ability to  
4 respond to.

5 MR. ROSENBERG: And I will represent this is not a new  
6 opinion, it is what he said at his deposition.

7 A. You'll have to restate the question.

8 BY MR. ROSENBERG:

9 Q. Are there other issues in connection with what Judge Tatel  
10 was asking you about Dr. Shaw's statement this morning that he  
11 was comfortable with the responses in order to draw conclusions?

12 A. I believe there were, but I would have to go back and look  
13 through the deposition. If you could direct me to --

14 Q. No, I can't do that. That would be leading and I would have  
15 to object to myself.

16 A. I mean, so let's see what we have talked about this time  
17 versus the deposition. We talked about weighting, we talked  
18 about -- we haven't talked about problems with the list that  
19 Mr. Hughes just mentioned, which I don't believe will affect the  
20 response rate calculation.

21 Q. Let me just ask one question. Do you have a basis upon  
22 which to compare the responses that Dr. Shaw received to  
23 anything else?

24 A. We have both Pew data, we have the ACS, the government  
25 surveys. Again, Dr. Hughes -- sorry. Dr. Shaw --

1 Q. Let me try this, if I can. Do you have a basis to compare  
2 it to Dr. Ansolabehere's population?

3 A. Okay. The only sub part of Dr. Ansolabehere's population  
4 that was mentioned, I believe, was the elderly and the poor. Do  
5 I have that correct from his data? I believe that's what was  
6 there. And he overrepresented the elderly tremendously - two  
7 and a half to one, if I'm not mistaken - and without weighting  
8 the data, it's clearly not representative. And I don't remember  
9 the numbers. I would have to be shown the table that Mr. Hughes  
10 showed me at the deposition.

11 MR. ROSENBERG: Okay. I have no further questions.

12 Thank you.

13 JUDGE COLLYER: All right. Thank you very much. Thank  
14 you, Dr. Marker.

15 MR. MORTARA: Your Honor, it's Adam Mortara for the  
16 State. I'm hoping we have a resolution to my cross-examination  
17 issue. I don't know that because I haven't heard from the  
18 Justice Department yet. I did want to offer yet another option  
19 to the court.

20 There's no more witnesses for today, so I thought --

21 JUDGE COLLYER: No, what happened to Mister --

22 MR. MORTARA: Oh, you're going to play a video? Oh, I  
23 thought we were done. Oh, we're going to video hour. I'm  
24 sorry, Your Honor, I thought there were no more live witnesses.  
25 There are no more live witnesses, there's video hour.

1                   JUDGE COLLYER: There are no more live witnesses.

2       Well, video 45 minutes or something. It's already quarter  
3       after. Do you think we can do it?

4                   MR. GEAR: My name is Bruce Gear, I represent  
5       Eric Holder in this matter. The video is for Carlos Uresti, and  
6       it's approximately 26 minutes long. We would like to at least  
7       start the video tonight if that would be permissible.

8                   JUDGE COLLYER: Please do, because we're going to be  
9       hard put for time tomorrow.

10          MR. GEAR: With your permission, we would proceed.

11          JUDGE COLLYER: I have a question for you. I don't  
12       know the answer to this because I've never had a video  
13       deposition shown in court. Does the court reporter take this  
14       down like a regular witness?

15          MR. HUGHES: Yes, Your Honor.

16          JUDGE COLLYER: All right. You and I, we know things.  
17       Go right ahead, Mr. Gear.

18                   **(Following is videotaped testimony of**  
19                   **SENATOR CARLOS URESTI played in open court:)**

20       Q. Senator, good morning.

21       A. Good morning.

22       Q. Again, my name is Bruce Gear, I'm with the Department of  
23       Justice, and I represent Eric Holder in this case. I'll be  
24       asking you a series of questions. You've been placed under  
25       oath, and we expect you to answer the questions fully and

1 completely and truthfully. Do you understand that?

2 A. Yes, sir.

3 Q. Okay. And is there anything that would prevent you from  
4 answering the questions truthfully today?

5 A. No, sir.

6 Q. Okay. So with that, I'm just going to go right into your  
7 questioning.

8 Are you currently a member of the Texas Senate?

9 A. Yes, sir.

10 Q. Which district do you represent in the Senate?

11 A. District 19.

12 Q. How long have you been a Senate member?

13 A. Just over six years.

14 Q. Did you serve in the government prior to becoming a senator?

15 A. Yes, sir, I served as a State Representative for  
16 District 118.

17 Q. And as far as District 118 is concerned, was any of  
18 District 118 encompassed in your current district?

19 A. Most of District 118 is in District 19, which is --  
20 District 118 is primarily in Bexar County.

21 Q. And what percentage of that district would you say is in  
22 your current Senate district?

23 A. Approximately 85 percent.

24 Q. Could you please describe your Senate district  
25 geographically?

1       A. Yes, sir. Senate District 19 commences primarily on the  
2       southeast side of San Antonio, which is in Bexar County, and  
3       extends all the way to El Paso, which if you were to drive it,  
4       is about a nine-hour drive one way from San Antonio to El Paso.  
5       That includes 23 counties, all or part of 23 counties. It  
6       doesn't include the city of El Paso, but it includes the  
7       County of El Paso. It's approximately a little over 50,000  
8       square miles; it includes two-thirds of the Texas/Mexico border;  
9       it has about 62 school districts. So it's considered the  
10      largest geographical Senate district in the continental  
11      United States.

12      Q. And what percentage of your constituents are  
13      African-American or Hispanic?

14                    MR. SWEETEN: Objection. Compound. Go ahead.

15      A. Approximately five percent.

16      Q. And let me break that up. What percentage of your  
17      constituents are African-American?

18      A. Yes, sir. Approximately five percent of my constituents are  
19      African-American.

20      Q. What percentage of your constituents are Hispanic?

21      A. Just shy of 70 percent.

22      Q. Do you believe that it's important to understand the racial  
23      demographics of your constituents?

24      A. Absolutely.

25      Q. Why?

1       A. Well, I learned a long time ago as a legislator that you  
2       have to represent your district, you have to vote your district,  
3       and the only way to truly understand your district and to vote  
4       your district is to know the people that you represent. And  
5       given that 75 percent of my -- approximately 75 percent of my  
6       constituency are either African-American or Hispanic, I think  
7       that's very important in the way that I represent them.

8       Q. Thank you. What are the poverty rates in your district, do  
9       you know that?

10      A. Generally, yes, sir. My district is considered the second  
11     to third poorest district in the State of Texas. At least as  
12     far as the 2000 census is concerned, the per capita income is  
13     about \$12,500 per year. There's a number of my constituents  
14     that live in poverty, or right along -- right at the border or  
15     level of the federal poverty level.

16      Q. Are minorities in your district more or less likely to own a  
17     vehicle as compared to Anglos?

18                    MR. SWEETEN: Objection to foundation.

19      A. Based on what I know about my district, they're less likely  
20     to own a vehicle.

21      Q. And how do you know this?

22      A. Well, again, I've represented Senate District 19 for about  
23     six years. I don't think, I candidly can say, anyone knows my  
24     district better than I do. I have toured it extensively, I've  
25     traveled it quite often, I have block-walked my neighborhoods, I

1 have had town hall meetings, I've had large groups of folks come  
2 in and talk to me. I've gotten to know my district pretty well.  
3 I know, for example, in Maverick County, the poverty levels are  
4 pretty high; I know in Presidio County, along the border,  
5 they're pretty high.

6 So based on my representation of the district, I can  
7 make that statement.

8 Q. Can you discuss the availability of public transportation in  
9 your district?

10 A. I can say that in San Antonio, the transportation, bus  
11 transportation, is actually pretty good. It's pretty  
12 impressive. But once you leave San Antonio - and by that I mean  
13 you go 20 miles outside of Bexar County - there's no  
14 infrastructure, bus transportation, other than perhaps a  
15 Greyhound bus. So if you wanted to catch a Greyhound bus from  
16 Del Rio, for example, you could take the Greyhound, but within  
17 the city of Del Rio, there's no bus transportation.

18 Q. And again, how do you know this?

19 A. I know it based on the fact that I've represented it so  
20 long. I know Del Rio very well. And I'm not just speaking  
21 about Del Rio, I'm speaking about Eagle Pass, which is another  
22 large town in my district, and Uvalde, so on and so forth. In  
23 other words, other than San Antonio, which is on one end of the  
24 district, and El Paso, which is at the other end, there's no  
25 infrastructure to speak of within those towns.

1 Q. In 2007, was a photo Voter ID Bill considered by the  
2 Texas Senate?

3 A. Yes, sir.

4 Q. Was that bill HB218?

5 A. Yes, sir, I think that's correct.

6 Q. Was there an attempt to bring HB218 to the Senate Floor for  
7 a vote?

8 A. Yes, sir, there was.

9 Q. Who made that decision to bring it to the Floor for a vote?

10 A. My understanding was the lieutenant governor,  
11 David Dewhurst.

12 Q. And that's David Dewhurst?

13 A. Yes, sir.

14 Q. When did you first learn that the lieutenant governor was  
15 going to attempt to bring HB218 to the Floor?

16 A. The morning that that occurred, I was actually home in my  
17 apartment - I was sick with the flu - and I was called by  
18 Senator Hinojosa to essentially hurry my butt up and get to the  
19 Senate Floor because the Voter ID Bill, as we called it, was  
20 going to come up.

21 Q. So you first learned about the vote by Senator Hinojosa?

22 A. Yes, sir.

23 Q. Why were you not in the Senate that day?

24 A. Again, I had the flu. I went home early that afternoon --  
25 the day before, rather. I was suffering with the flu, and I

1       went home, tried to get better. The following morning, the day  
2       that the bill came up, again, I was in bed sick, and I called in  
3       essentially to the Secretary of the Senate, Patsy Spaw, to  
4       advise her that I would be in later in the afternoon. Plus, I  
5       called two other committee chairmen - chairman and chairwoman -  
6       to advise them of the same.

7       Q. And who were the two other committee chairmen and women?

8       A. It was Chairman Brimer, Kim Brimer. He was the chairman at  
9       the time of the administration committee, and we had an early  
10      committee hearing that morning. And Senator Jane Nelson, she's  
11      the chairwoman of health and human services.

12      Q. Do you recall what you told Senator Brimer?

13      A. We actually called their offices. They weren't in yet. We  
14      called pretty early in the morning. Again, I don't like to be  
15      late to meetings, and I was a freshman senator, and I was trying  
16      to do the senatorial thing and just simply put them on notice  
17      that I would be in later in the morning. I was going to try to  
18      rest and feel better.

19      Q. What was your reaction when you heard that HB218 was being  
20      brought to the Senate Floor?

21      A. I was stunned. Again, I was sick in bed. At first I  
22      thought -- quite frankly, I thought Senator Hinojosa was teasing  
23      me. But then, when I heard it in his voice he was not teasing  
24      me, I jumped out of bed and got dressed as quickly as I could,  
25      and literally ran to the Capitol from my apartment, which was

1       about 50 to 60 yards away, and ran onto the Senate Floor to cast  
2       my vote in objection to the bill.

3       Q.   Do you recall if you had any conversations with other  
4       senators about whether this would happen while you were out  
5       sick?

6       A.   The day before, I was in the members lounge laying on one of  
7       the chairs - because again, I was sick with the flu - and I  
8       recall Senator Leticia Van de Putte and Senator Kyle Janek were  
9       in the members lounge, and again they were kind of teasing me,  
10      but they encouraged me to go home. What's interesting is,  
11      Senator Janek is a doctor and Senator Van de Putte is a  
12      pharmacist, and so I actually was seeking some medical advice  
13      from them, if you will. And they encouraged me to go home, and  
14      Senator Janek specifically said, "It's not like we're going to  
15      take up the Voter ID Bill, Carlos." And I said, "Okay, I'm  
16      going to go home," and that's, in fact, what I did.

17                   MR. SWEETEN: Objection, hearsay, and move to strike  
18       the hearsay sections.

19                   MR. GEAR: This is a contemporaneous statement, it's an  
20      effect on the listener, it's not being offered for the truth of  
21      the matter asserted.

22                   THE WITNESS: Can we stop for a moment, please?

23                   (Pause in videotaped deposition.)

24                   (Videotaped testimony resumed:)

25       Q.   Why did you decide to come in late that day to the Senate?

1       A. Well, it really wasn't my decision. I was sick with the  
2       flu; I didn't have any energy the day before. Again, I had gone  
3       home early, which is not like me to do, but I didn't have a  
4       choice. And so I felt that I was able to call in, let my  
5       colleagues know I would be coming in later in the morning.

6              Because it's the custom of the Senate that after we do  
7       roll call first thing in the morning, we do the prayer; then we  
8       do Doctor of the Day, which is where we identify the doctor  
9       that's going to take care of the senators for the day, they kind  
10       of volunteer; we do resolutions where we honor, for example, a  
11       soldier that might have just returned from one of the wars; we  
12       honor -- we do county days, Uvalde County day; somebody is  
13       celebrating their 50th anniversary, so on and so forth. And  
14       that usually takes -- sometimes it takes two or three hours, but  
15       at a minimum, an hour, hour and a half.

16              So I felt comfortable that given that that was the way  
17       things were going on a daily basis, one; coupled with the fact  
18       that I had informed my colleagues that I was out with the flu,  
19       that I could get a couple of hours of rest before we started the  
20       Senate's business.

21       Q. Was the vote done differently that day?

22       A. Absolutely.

23       Q. How was it done differently?

24       A. Well, I was in there when it all commenced, but as I  
25       understand it, they - the lieutenant governor, the presiding

1       officer - decided to skip with the resolutions, the normal  
2       resolutions of the day, and go straight into bringing up, as we  
3       call it, the Voter ID Bill. In other words, what normally would  
4       have taken an hour to two hours handling the resolutions,  
5       honoring the soldiers, Marines, et cetera, was put on hold, and  
6       immediately that bill was called up.

7       Q. Did HB218 pass the Senate?

8       A. No, sir. I was able to make it to the Floor in time to vote  
9       against it on the second time that the lieutenant governor  
10      called it up.

11      Q. After HB218 failed to pass in the Senate, did there come a  
12      time when you had a conversation with the lieutenant governor  
13      about the bill?

14                    MR. SWEETEN: Objection. It's legislative privilege.  
15      Go ahead.

16                    MR. GEAR: And I would just respond to that that there  
17      is a motion in limine pending. If the court rules in your  
18      favor, then you would have an opportunity to move to strike his  
19      answer.

20                   Please answer.

21      A. Immediately after I made it onto the Senate Floor, you  
22      basically vote -- if you vote against the bill, you hold up two  
23      fingers; if you vote for a bill, you hold up one finger. I  
24      walked onto the Senate floor and I held up my two fingers.  
25      Again, I didn't realize everything that had happened before.

1                   After the roll call was completed, the presiding  
2                   officer gaveled, said that the bill failed to pass, and within a  
3                   few -- a minute or so, the presiding officer, Lieutenant  
4                   Governor Dewhurst, walked up to my desk, and I was sitting  
5                   slouched down like this trying to catch my breath. He leaned  
6                   over my desk and said, "Senator" -- he said, "Carlos, I'm sorry,  
7                   but I had to try to pass that bill."

8                   Q. And that conversation took place on the Floor?

9                   A. Yes, sir. Immediately after the vote.

10                  Q. After 2007, the vote, what if anything did supporters do of  
11                  the bill to ensure -- in 2009 to ensure that they could  
12                  successfully bring voter ID legislation to the Floor for a full  
13                  vote?

14                  MR. HUGHES: Objection to foundation; objection, calls  
15                  for speculation.

16                  A. Well, what we have in the Senate is we have what's called  
17                  the two-thirds rule. There are 31 state senators, and  
18                  essentially what that means is, before a bill can be called up  
19                  for consideration on the Senate Floor for a vote, two-thirds of  
20                  the senators that are present have to agree to bring up the bill  
21                  for debate, for discussion. Now, they can vote against the  
22                  bill, ultimately, or they can of course vote in favor of it, but  
23                  to bring up a bill, two-thirds have to agree to do that.

24                  And that's what I think allows our Senate to work so  
25                  well together. It allows for compromise. Because regardless of

1 what party is in the majority, if you don't have 21 senators  
2 agreeing to bring up the bill, then you have to reach across the  
3 aisle to get other senators to work with you to vote to bring up  
4 that bill.

5 In this situation, the -- and it only takes a majority  
6 of the senators to change the rules. The majority would be the  
7 Republican senators at the time agreed to do away with the  
8 two-thirds rule with regard to the Voter ID Bill.

9 Q. Do you recall any discussion in 2007 off the record among  
10 legislators --

11 (End videotaped testimony.)

12 JUDGE COLLYER: Can we stop this now? I'm sorry, the  
13 members of the court have commitments. I don't know why they  
14 have day jobs, too, when they're in the middle of this trial,  
15 but they do.

16 So let's pick this up, back it up a little bit, because  
17 we missed the last question that was being asked just then, and  
18 we'll take it up again in the morning.

19 MR. GEAR: Thank you, Your Honor.

20 JUDGE COLLYER: Thank you.

21 (Proceedings adjourned at 5:37 p.m.)

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1                   **CERTIFICATE OF OFFICIAL COURT REPORTER**

2

3                   **I, Rebecca Stonestreet, certify that the foregoing is a**  
4                   **correct transcript from the record of proceedings in the**  
5                   **above-entitled matter.**

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10                  **SIGNATURE OF COURT REPORTER**

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